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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 496

JOHN E. POTTHARST, SR.,

Appellant,

versus

RICHARDSON & BASS (LOUISIANA ACCOUNT), THE BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, PLAQUEMINES PARISH POLICE JURY, AS GOVERNING AUTHORITY OF GRAND PRAIRIE LEVEE DISTRICT, DELTA DEVELOPMENT COMPANY, INC.,

Appellees.

Appeal from the Supreme Court of Louisiana.

STATEMENT AS TO JURISDICTION.

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IN THE

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OCTOBER TERM, 1956

No. ——

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Appellant,

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Appeal from the Supreme Court of Louisiana.

STATEMENT AS TO JURISDICTION.

APPEAL FROM THE SUPREME COURT OF LOUISIANA.

STATEMENT AS TO JURISDICTION.

The appellant, pursuant to United States Supreme Court Rules 13 (2) and 15, files this his statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment of the Supreme Court of Louisiana in question, and should exercise such jurisdiction in this case.

OPINION BELOW.

The Twenty-fifth Judicial District Court, Parish of Plaquemines, State of Louisiana, rendered judgment July 15, 1954, and filed reasons for judgment on August 12, 1954. The Supreme Court of Louisiana delivered an original written opinion June 30, 1955, and a written opinion on rehearing on February 20, 1956. Copies of the judgment, reasons therefor, and of the original opinion and final opinion on rehearing, are attached to this jurisdictional statement.

JURISDICTION.

The appeal herein is from a final opinion rendered, signed and entered by the Supreme Court of Louisiana dismissing the intervention of appellant in a *concursus* proceeding invoked under Louisiana Revised Statutes 13:4811-4817 by which appellant sought to preserve the contractural privilege conferred by Louisiana Act 325 of 1938.

The final opinion of the State Supreme Court construed Louisiana Act 311 of 1942 as effecting a grant

to Orleans Levee Board of full ownership of the lands herein involved, and denied appellant's right of security thereon, thus rendering Act 311 of 1942 repugnant to the impairment of contract clause of Article 1, Section 10 of the Constitution of the United States.

Appellant also complains that the final judgment of the State Court is founded on other errors which deprived appellant of a fair hearing, and denied him due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. These questions are reviewable on this appeal under the authority of *Prudential Insurance Co. v. Cheek*, 259 U. S. 530, 547, and *Flournoy v. Wiener*, 321 U. S. 253, 263, and 28 U. S. C. § 2103.

Following the original opinion of the Supreme Court of Louisiana rendered and entered June 30, 1955, and the rehearing, the final decree and opinion appealed from was rendered and entered on February 20, 1956. Notice of appeal was filed in the Supreme Court of Louisiana on May 16, 1956.

On motion filed by appellant on July 12th, 1956, an order was signed by the Hon. John B. Fournet, Chief Justice, Supreme Court of Louisiana, extending the time within which the record on appeal may be filed and the appeal docketed in the Supreme Court of the United States to and including the fifteenth day of October 1956, copy of which order is annexed.

The Supreme Court of the United States has jurisdiction to review by direct appeal the judgment and

decree complained of by the provisions of 28 U. S. C. § 1257 (2).

The following decisions sustain this jurisdiction. *Jefferson Branch Bank v. Skelly*, 1 Bl. 436; *Bridge Proprietors v. Hoboken Co.*, 1 Wall. 116; *Wright v. Nagle*, 101 U. S. 791; *McGahey v. Virginia*, 135 U. S. 662; *Scott v. McNeal*, 154 U. S. 34; *Stearns v. Minnesota*, 179 U. S. 223; *Coombes v. Getz*, 285 U. S. 434; *Atlantic C. L. R. Co. v. Phillips*, 332 U. S. 168; *McCullough v. Virginia*, 172 U. S. 102; *Houston & Texas Central R. R. Co. v. Texas*, 177 U. S. 66; *Hubert v. New Orleans*, 215 U. S. 170; *Carondelet Canal Co. v. Louisiana*, 233 U. S. 362; *Louisiana Ry. & Nav. Co. v. New Orleans*, 235 U. S. 164.

The following decisions sustain the jurisdiction of this Court to consider the other questions raised. *Manly v. Georgia*, 279 U. S. 1 and *Sanders v. Shaw*, 244 U. S. 317.

Louisiana Act 311 of 1942, appears at page 1015 of the Acts passed by the Legislature of the State of Louisiana at the Regular Session, 1942, and is set out *verbatim* in the appendix.

Louisiana Act 325 of 1938, under which appellant's bonds are secured, appears at page 808 of the Acts passed by the Legislature of the State of Louisiana at the Regular Session, 1938, and is set out *verbatim* in the appendix.

QUESTIONS PRESENTED.

Grand Prairie Levee District acquired and recorded title to the lands herein involved in 1905. There was no alienation thereof except a recorded mineral lease to Delta Development Co., Inc. Pursuant to Act 325 of 1938,

a copy of the resolution and bond was recorded which created a mortgage on all lands, and the revenues therefrom, owned by Grand Prairie Levee District. Appellant acquired ten of the bonds which remain unpaid and outstanding to this date. The Legislature of the State of Louisiana subsequently enacted Act 311 of 1942. The Supreme Court of Louisiana held that by the passage of Act 311 of 1942, Grand Prairie Levee District was divested of title to the lands herein involved which thereby became vested in Orleans Levee District. The principal questions presented on appeal are:

(1) Can a state legislature authorize a subdivision of the state to issue bonds secured by mortgage on all of the lands owned by the subdivision and by all of the revenues derived from said lands, and, after issuance of the bonds, by legislative fiat transfer the lands to another subdivision of the state, free from the mortgage securing the payment of the unmatured outstanding bonds, without depriving the holder of part of his security, in violation of the Constitution of the United States, Article I, Section 10?

(2) Can a state court constitutionally hold that a contract may be impaired by the legislative process of transferring lands from one Subdivision of a state to another, free from an existing bond-mortgage granted by the first Subdivision, unless the bond holder can show that his bonds are in default or that the remaining security is precarious?

There are two additional questions presented involving the due process clause of the Fourteenth Amendment to the Constitution of the United States. The trial

court ruled against the admissibility as evidence of the declarations contained in the preamble of Act 311 of 1942. The Supreme Court of Louisiana accepted these declarations as conclusive facts, in lieu of the judicially determined facts of record, without affording any opportunity to rebut.

(3) Can a state appellate court in reviewing a case constitutionally accept arbitrary statements contained in the preamble of a legislative act as conclusive facts, in lieu of the judicially determined facts of record?

(4) A trial court having ruled against the admissibility in evidence of declarations contained in the preamble of a legislative act, and no evidence having been adduced to establish the existence of the declarations as actual facts, can an appellate court accept the excluded declarations as actual established facts and base its decision thereon, thereby depriving appellant of all opportunity to introduce evidence to contravene the declarations, without a denial of due process of law?

STATEMENT OF THE CASE.

The Grand Prairie Levee District is a Subdivision of the State of Louisiana. Title to the lands involved herein was transferred to this Levee District by instrument dated February 6, 1905, and on the same date placed of public record.

A mineral lease, including the same lands, was granted on July 20, 1936, by the Grand Prairie Levee District to Delta Development Co., Inc., and this mineral lease was also publicly recorded on July 25, 1936.

The Legislature of Louisiana by Act 325 of 1938 authorized the Grand Prairie Levee District to issue bonds to the total amount of $50,000.00, and to record a copy of one of said bonds with a certificate signed by its President and Secretary, bearing the seal of said Board, attesting to the total amount of such bonds which recordation would operate as a mortgage on all of said Levee District lands until the final payment of said bonds in principal and in interest.

The copy of the bond was duly recorded on September 30, 1938.

Relying on this public record, appellant purchased 10 bonds of an aggregate face value of $10,000.00. The bonds remain outstanding and unpaid. The bond as recorded, and each of those held by appellant, contains the provision:

> "This bond, principal and interest, secured by taxation and by mortgage, sale and revenues of all lands owned by the Grand Prairie Levee District."

Subsequently, a sublease of the mineral rights was granted by Delta Development Company, and Orleans Levee District also granted a lease to the same lessee on the lands involved herein. Later oil was produced and royalties are payable to the owner of the lands involved. Availing itself of the provisions of Louisiana Revised Statutes 13:4811-4817, the lessee deposited the owner's royalties, and invoked the instant *concursus* proceeding.

Appellant intervened in the *concursus* proceeding and in his petition of intervention set forth and raised

the federal question of impairment of contract here presented, as follows:

> "VII. All of the income and revenue derived from said mineral lease are part of the security for the payment of the principal and interest on the aforesaid bonds, and any diversion thereof to Orleans Levee Board or to any person or corporation, political or otherwise, would constitute an impairment of the contract under which the aforesaid bonds were issued and negotiated.
>
> "VIII. If Act 311 of 1942 is construed as divesting Grand Prairie Levee District of any property which it owned at the time that the bonds were issued, intervenor pleads that said Act is unconstitutional for the reason that said Act would impair the obligation of the contract under which said bonds were issued, in violation of Section 15, Article IV of the Louisiana Constitution and of Section 10, Article I of the Constitution of the United States."

The trial court recognized Grand Prairie Levee District to be the last recorded owner of the lands involved, maintained the intervention of appellant, and denied all claim of the Orleans Levee Board. In support of his judgment the trial judge said:

> "A holder of some of those bonds has intervened herein to resist any attempt to take away the security of his bonds specifically authorized by Act 325 of 1938 . . . He is entitled to the protection he claims. Louisiana ex rel. Hubert, Receiver v. Mayor and Council of the City of New Orleans, 215

U. S. 170, 54 L. Ed. 144, 30 S. Ct. 40; Wolff v. New Orleans, 103 U. S. 358; Louisiana v. New Orleans, 162 U. S. 203." (Full reasons in appendix).

On appeal the Supreme Court of Louisiana entered an original opinion on June 30, 1955, (included in the appendix filed herewith) acknowledging the federal question raised by appellant but holding that Louisiana Act 246 of 1928 established the territorial jurisdiction of the Grand Prairie Levee District in an area which did not include the lands involved herein, and that Act 325 of 1938 "could only mean that these bonds are secured by a mortgage on the property within the confines of the levee district as created and defined by the Act of 1928." Yet the court also held in that opinion that it was by Act 311 of 1942 that Grand Prairie Levee District was divested of its title to the lands involved, and that by said act title was vested in Orleans Levee Board.

Appellant filed special pleas of unconstitutionality (annexed in the appendix hereto) raising the two additional federal questions presented herein. These questions could not be raised earlier as the deprivation of a fair hearing and denial of due process resulted from the action of the Louisiana Supreme Court in accepting the legislative recitations contained in the preamble to Act 311 of 1942 as proven facts, without evidence to establish their correctness, and not withstanding the legislative declarations are contrary to the findings of fact of the trial court

included in that court's reason for judgment (annexed in the appendix).

On rehearing, the Supreme Court found and pointedly determined that Grand Prairie Levee District had not been divested of its title to the lands involved by Louisiana Act 99 of 1924, nor by Louisiana Act 246 of 1928, which re-defined the boundaries and jurisdiction of that district, and that prior to the effective date of Louisiana Act 311 of 1942, "Grand Prairie Levee District unquestionably had a clear title to the land covered by the mineral leases involved herein which has been duly recorded in the conveyance records of Plaquemines Parish."

The court again noted the federal questions originally raised and that the title to lands involved, the bond mortgage on the lands and revenues, and the mineral lease of Delta Development Co., Inc., were all of record at the time the bonds were issued.

The Louisiana Supreme Court again dismissed the intervention of appellant, holding in its final opinion that "the case merely involves the recognition of ownership of certain oil production, there is no necessity and really no issue for determination respecting the rights of a bondholder of Grand Prairie Levee District . . ."; ". . . this provision relative to the bondholder's security in revenues from lands is applicable only to the mortgaged lands while they are owned by the Levee District." And stated that appellant made no claim "that his bonds are in default or that his rights as mortgagee of the land might be impaired by the outcome of this litigation. . . ."

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

* * *

THE CONSTITUTIONAL QUESTION OF IMPAIRMENT OF THE OBLIGATION OF CONTRACT.

The Supreme Court of Louisiana has held that Louisiana Act 311 of 1942 is a legislative grant of the lands involved from Grand Prairie Levee District to Orleans Levee District. The act was held to pass the title free and clear of the outstanding mortgage previously granted by the recorded owner, Grand Prairie Levee District.

The Supreme Court of Louisiana has held that the Legislature of the State of Louisiana, after authorizing the Grand Prairie Levee District to issue bonds and secure same by mortgage on all the lands owned by the said Levee District and by all the revenues derived from said lands, may, after issuance of the bonds, impair this obligation through the simple device of transferring the lands free of the bond-mortgage to another agency of the State.

In the Louisiana Supreme Court's original opinion it held that the mortgage securing the bond did not extend to the lands in controversy. In its final opinion the Court recognized that the lands in question did originally form part of the mortgage securing the payment of the bonds, but concluded that the bond mortgage ceased to extend to the particular lands upon the subsequent passage of Louisiana Act 311 of 1942, making the grant to Orleans Levee Board, and that all revenues, specifically all mineral royalties, passed to the Orleans Levee Board free and clear of intervenors' bond-mortgage, thus impairing the contract under which appellant acquired his bonds.

This Court has held "that obligation is impaired, in the sense of the Constitution, when the means by which a contract, at the time of its execution, could be enforced, that is, by which the parties could be obliged to perform it, are rendered less efficacious by legislation operating directly upon those means. Louisiana, ex rel. Hubert v. New Orleans, 215 U. S. 170; United States, ex rel. Wolff v. New Orleans, 103 U. S. 358; Louisiana v. New Orleans, 162 U. S. 203; United States, ex rel. Van Hoffman v. Quincy, 4 Wall. 535."

A variation of the same question is presented in this case because the final decision of the Louisiana Supreme Court appears to hold that a contract may be impaired by the legislative process of transferring lands from one subdivision of the State to another, free from an existing bond-mortgage granted by the first Subdivision, unless the bondholder can show that his bonds are in default or that the remaining security is precarious. The Louisiana Supreme Court acknowledges the impairment, but resolves the problem by presenting the question of degree of impairment.

The decisions cited above are decisive on the question of degree.

The Supreme Court of Louisiana, in its latest decision on the subject, *Vincent Dantoni v. The Board of Levee Commissioners of the Orleans Levee District*, 227 La. 575, 80 So. (2d) 81, has recognized the soundness of the rule. Therein it says: "One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. It is not, by the Constitution, to

be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force. Planters' Bank v. Sharp, et al., 6 Howard 301."

THE CONSTITUTIONAL QUESTION OF DENIAL OF DUE PROCESS OF LAW.

The two opinions of the Supreme Court of Louisiana, appearing in the appendix, disclose that the legislative recitations contained in the preamble to Act 311 of 1942 were adopted by the Court as conclusive. In contradiction to those legislative declarations are the findings of fact contained in the judgment and reasons for judgment of the trial Court, appearing in the appendix. By accepting the legislative declarations and by making them conclusive of the rights of the parties, the Louisiana Supreme Court has denied the due process of law afforded by the Fourteenth Amendment to the Constitution. *Manley v. Georgia*, 279 U. S. 1.

The trial Court did not permit the legislative recitations contained in the preamble to Louisiana Act 311 of 1942 to be received in evidence as established facts, or otherwise. The Orleans Levee Board attempted to introduce Louisiana Act 311 of 1942 into evidence. The ruling of the trial court sustaining the objection to the introduction is contained in the appendix. The Orleans Levee Board made no attempt to introduce evidence to otherwise establish, or attempt to establish, as facts to be judicially determined, the recitations contained in the preamble to said act. When the Supreme Court of Louisiana, on the appeal of the case, accepted the excluded declarations as actual established facts upon which to base its decision,

appellant was deprived of all opportunity to introduce evidence to contravene the declarations. The result is a denial of due process of law by act of the Supreme Court of Louisiana, as denounced in *Saunders v. Shaw*, 244 U. S. 317.

CONCLUSION.

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal under 28 U. S. C. § 1257 (2), and has jurisdiction to consider, at the same time, the questions otherwise limited to a petition for writ of certiorari under 28 U. S. C. 1257 (3). *Flournoy v. Wiener*, 321 U. S. 253 and 28 U. S. C. § 2103. It is respectfully suggested that, as to the latter questions, this Court may find this cause appropriate for reversal without further argument. *Securities and Exchange Commission v. Otis Co.*, 338 U. S. 843, 70 S. Ct. 88.

Respectfully submitted,

WILLIAM M. CAMPBELL, JR.

APPENDIX A.

Judgment—July 15, 1954—Filed July 15, 1954.

Richardson & Bass (La. Acct.) vs. Board of Levee Commissioners of the Orleans Levee District, et al.	No. 3031 25th Judicial District Court Parish of Plaquemines State of Louisiana

Date Filed 7/15/54
/s/ Pauline C. Hebert
Deputy Clerk

JUDGMENT

This cause was duly heard, submitted and taken under advisement. And now the Court being of the opinion that the law and the evidence favor the defendants, Police Jury of Plaquemines Parish as governing authority of Grand Prairie Levee District and Delta Development Company, Inc., and for other reasons to be reduced to writing and filed herein;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein recognizing Grand Prairie Levee District to be the last record owner of the South ½ of Section 18, T. 18 S. R. 16 E., in the Southeastern District of Louisiana, East of the Mississippi River, and recognizing that the Police Jury of Plaquemines Parish as governing authority of said Grand Prairie Levee District is entitled to one-eighth (1/8th) of fifty-five per centum of the minerals produced by the plaintiff, Richardson & Bass (Louisiana Account), from its Wells Nos. 4-H, 6-H, 7-H and 14-H in Cox Bay Unit No. 2, and of

so much of all funds deposited herein by said plaintiff as represents the value of said interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the lease by Grand Prairie Levee District to the defendant, Delta Development Company, Inc., dated July 20, 1936, and supplemented July 24, 1941, registered in Conveyance Book 81, Page 642, and in Conveyance Book 104, Page 187, as well as the sublease by said defendant to plaintiff, dated December 27, 1950, registered in Conveyance Book 151, Page 206, be recognized; and that said Delta Development Company, Inc., be further recognized as entitled to one-forty-eighth (1/48th) of fifty-five per centum of the minerals produced by the plaintiff, Richardson & Bass (Louisiana Account), from its said Wells Nos. 4-H, 6-H, 7-H and 14-H in Cox Bay Unit No. 2, and of so much of all funds deposited herein by said plaintiff as represents the value of said interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that all claims of the defendant, Board of Levee Commissioners of the Orleans Levee District to any part of the funds deposited herein be denied, and that said defendant pay all costs of these proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that plaintiff, Richardson & Bass (Louisiana Account), be relieved of all costs and of all liability to Board of Commissioners of Orleans Levee District; and that it be relieved from liability to the other defendants herein for the royalties represented by the aggregate of the deposits made herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the intervention of John E. Pottharst,

Sr., be maintained at the cost of Board of Levee Commissioners of the Orleans Levee District.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the funds herein deposited be distributed and paid over by the Clerk of this Court in accordance herewith.

Judgment read, rendered and signed in open Court this 15th day of July, 1954.

/s/ Bruce Nunez
J u d g e

APPENDIX B.

Reasons for Judgment—Filed August 12, 1954.

Richardson & Bass (La. Acct.) versus Board of Levee Commissioners of the Orleans Levee District, et al.	No. 3031 25th Judicial District Court Parish of Plaquemines State of Louisiana Date filed 8/12/54 /s/ Pauline C. Hebert Deputy Clerk

REASONS FOR JUDGMENT.

Plaintiff provoked this concursus under R. S. 13:4811, et seq., impleading the Plaquemines Parish Police Jury, as governing authority of the Grand Prairie Levee District, the Board of Levee Commissioners of the Orleans Levee District, and Delta Development Co., Inc.

Plaintiff alleged that it had produced oil from a tract of 240 acres in this Parish, designated as Cox Bay Unit No. 2, under leases from the State, from Orleans Levee Board, and under a sub-lease from Delta Development Co., Inc., the lessee of Grand Prairie Levee District; that the interest of the State is not disputed, but that there exists a conflict between the royalty claims of Orleans Levee Board, on one hand, and those of Grand Prairie Levee District and Delta Development Co., Inc., on the other hand, resulting from a dispute as to the ownership of the lands in the aforesaid Unit. Wherefore, plaintiff deposited with the Clerk of this Court the proportionate proceeds from the sale of the royalty oil and prayed for leave to continue to make such deposits from month to month until final determination of the rights of the aforenamed claimants.

The evidence is uncontradicted and conclusive (a) that Grand Prairie Levee District legally acquired title to the lands from which the oil was produced by act of conveyance from the State of Louisiana, dated January 18, 1905, registered in Plaquemines Parish C.O.B. 39, Folio 105, on February 6, 1905; (b) that it had never divested itself of said title; and (c) that no adverse claim of title whatsoever appears of public record.

This court is bound, therefore, under the provisions R. S. 30:1105 and 106 to render judgment in favor of laquemines Parish Police Jury, as governing author- of the Grand Prairie Levee District, and of its lessee, Delta Development Co., Inc., Brown v. United Gas Public Service Co., 197 La. 616, 2 So. (2d) 41; Arkansas Fuel Oil Co. v. State of Louisiana, ex rel. Muslow, 304 U. S. 197, 58 S. Ct. 832.

The Orleans Levee Board asserts a claim of title to these lands by virtue of the provisions of Act 99 of 1924, which has been repealed by Sec. 2 of Act 2 of the Extra Session of 1950. Neither in the title nor in the body of that act can this Court find any indication of a legislative purpose to divest the absolutely vested title of Grand Prairie Levee District and vest it in Orleans Levee Board. In State, ex rel. Hodge v. Grace, 191 La. 15, 184 So. 538, the Supreme Court held:

> "Our jurisprudence shows that both the judicial and legislative branches of our government have stressed the importance of carefully dealing with the lands granted by the State to the levee boards under the provisions of Section 12 of Act No. 95 of 1890. That this grant of lands was not lightly

to be considered as revoked or repealed by the Legislature is established by a number of decisions. Various parties have used the provisions of Act No. 214 of 1908, Act No. 30 of 1915, Ex. Sess., and Act No. 230 of 1918, as a basis for arguing that the lands grants to the levee boards have been revoked or repealed, but their claims were rejected, State, ex rel. Atchafalaya Basin Levee Board v. Capdervielle, et al., 142 La. 111, 76 So. 327; Atchafalaya Land Co., Ltd., v. Grace, Register, et al., 143 La. 637, 79 So. 173; State, ex rel. Board of Com'rs of Caddo Levee Dist., et al., v. Grace, Register, et al., 145 La. 962, 83 So. 206; Board of Com'rs. of Tensas Basin Levee Dist. v. Hardtner, et al., 164 La. 632, 114 So. 494.

"Our jurisprudence also shows that the courts and the members of the Legislature have consistently recognized the difference between the lands which have been granted to the levee districts and not formally conveyed to them and those lands which have been conveyed to them by the State through proper recorded instruments of conveyance signed by the Register of the State Land Office and the State Auditor. See the authorities cited supra and also State, ex rel. Fitzpatrick v. Grace, Register, et al., 187 La. 1028, 175 So. 656, and State v. Board of Comm'rs. of Caddo Levee Dist., 188 La. 1, 175 So. 678.

"In recognition of this legislative policy of treating lands to which the levee districts have perfected title, different from those in which it had an inchoate right or title, this Court held, in the instant

> case, that the two Acts in question did not divest the levee Board of its 'absolutely vested' title to the property in controversy but, on the contrary, that the Acts had reference to redemptions of property only when the title thereto was in the State or in some subdivision of the State to which the lands had been adjudicated in the first instance."

The suggestion of Orleans Levee Board that because the Legislature required it to pay the bonded and unbonded indebtedness of the Grand Prairie Levee District, it thereby acquired title to all of the lands of the Grand Prairie Levee District situated within the boundaries of the Bohemia Spillway, is unsound. The primary source of revenue of the Grand Prairie Levee District at the time of the passage of Act 99 of 1924, was from taxation of privately owned lands. Expropriation of these privately owned lands by Orleans Levee Board would free them from taxation and deprive the Grand Prairie Levee District of its main source of revenue. For this reason, the Orleans Levee Board was required by said Act to assume the obligations of the Grand Prairie Levee District.

The contention that Act 99 of 1924, divested the Grand Prairie Levee District of title to its lands is further refuted by that Act itself. It authorized the Orleans Levee Board "in its discretion" to construct "on the east bank of the Mississippi River in the Parish of Plaquemines" a spillway or waste weir to be "located and designated according to plans and specifications as shall have been approved by the State Board of Engineers and the Mississippi River Commission." The east bank of the Mississippi River in Plaquemines Parish extends in distance over 100

miles from its upper boundary to its southernmost extremity. It is inconceivable that the Legislature intended that the absolute title of Grand Prairie Levee District to specific lands could become divested and that a title should be acquired by Orleans Levee Board without any indication as to the location or extent of the land affected.

The Court knows of no case in the jurisprudence of this State, and none has been cited, approving a claim of title to real estate based on mere inference, drawn from uncertain language, and from unrealized contingencies depending on the discretion of one board to be exercised subject to the approval of two other boards. The result contended for by Orleans Levee Board would require a holding that the Legislature can constitutionally delegate to others the power of legislating with respect to the lands of Grand Prairie Levee District.

Furthermore, there is nothing in the title of Act 99 which indicates that the Grand Prairie Levee District was to be divested of its property. On the contrary, the title of the Act indicates that the necessary property to create the spillway or waste weir is to be acquired by "expropriation", which negatives any idea of an intention to convey the property of one public board to another. If anything in the body of the Act could be construed as contended for by the Orleans Levee Board, such portion would be beyond any indication in the title and would be clearly in violation of Article III, Section 16 of the Constitution. Airey v. Tugwell, 197 La. 982, 3 So. (2d) 99, and State v. Gulf Refining Co., et al., 202 La. 951, 13 So. (2d) 277.

The Orleans Levee Board claims that the waste weir extends from the lower line of Bohemia Plantation, above, to Cuselich Canal, below, and from the Mississippi River to some indeterminate location called the "sea". But the permit required by Act 99 to be secured by the Orleans Levee Board from the State Board of Engineers and from the Mississippi River Commission, only authorized the construction of the waste weir from the lower line of Bohemia Plantation, above to Bayou Lamoque, below, and from the Mississippi River to the back levee. Most of the land shown by the public records to have been acquired by the Orleans Levee Board is situated on the Mississippi River side of the back levee. These acquisitions are depicted on a map of J. C. de Armas, Jr., introduced in evidence. Only an insignificant portion of the privately owned lands situated in the rear of the back levee was acquired. Act 99 required that all privately owned lands situated within the waste weir be acquired by Orleans Levee Board prior to construction of the weir. It is obvious from the plans submitted by its engineers to the State Engineers and the Mississippi River Commission that no lands were required in the rear, or east, of the back levee. The uncontradicted testimony of three witnesses, familiar with the Bohemia Spillway area, establishes that no river water ever flowed over any lands behind the back levee canal, but dispersed itself into the back levee canal and thence through the numerous bayous and other outlets to open water. The conclusion is unavoidable that the Bohemia Spillway authorized by Act 99 of 1924, and as established by the Orleans Levee Board, never extended beyond the lower line of Bohemia Plantation to Bayou Lamoque and from the Mississippi River to the back levee. The land herein involved is in the S½ of Section 18, T. 18 S., R. 16 E. This half

section is situated over a mile in the rear or on the east of this back levee, and in the rear or on the east side of Cox Bay, which is an arm of the sea, and consequently it is wholly outside of the limits of the Bohemia waste weir or spillway, and it has never been known to have ever received waters from the Mississippi River.

The Orleans Levee Board also relies on Act 311 of 1942. Prior to that Act, the Orleans Levee Board had no title whatsoever to any of the lands of the Grand Prairie Levee District. That Act, therefore, "confirmed, quieted and acknowledged" nothing with regard to the Grand Prairie Levee District's lands because there was no title to these lands in Orleans Levee Board to be "confirmed, quieted and acknowledged." The Act cannot be considered as a grant in praesenti of the Grand Prairie Levee District Lands, as urged by Orleans Levee Board, for to so construe it would do violence to Section 16 of Article III of the Constitution, no such purpose being indicated in the title of the Act. Such construction would also be violative of Section 12 of Article IV of the constitution as an unconstitutional attempt to grant the property of the Grand Prairie Levee District to the Orleans Levee Board. The Orleans Levee Board cites the assumption of the bonded indebtedness and the assets of the Grand Prairie Levee District by the Plaquemines Parish Police Jury as being a comparable grant of property. The validity of that transaction is not at issue in this case, but it appears to be covered by Article IV, Section 14 (K) of the Constitution as amended.

Under Sections 1 and 2 of Article II of the Constitution the Legislature has no authority to interpret its

prior legislation. See City of New Orleans v. Louisiana Mutual Ins. Co., 26 La. Ann. 499; Parish of Caddo v. Parish of DeSoto, 114 La. 366, 38 So. 273; State, ex rel. Parish Board of Health of Calcasieu Parish v. Police Jury of Calcasieu Parish, 161 La. 1, 108 So. 104; and State, ex rel. Porterie v. Housing Authority of New Orleans, 190 La. 710, 182 So. 725. No effect can, therefore, be given to the preambles in Act 311 of 1942, nor can effect be given to that portion of the Act which attempts to recognize rights, ownership and possession "to have come into existence when said Orleans Levee Board located and constructed said Bohemia Spillway in the year 1925."

The Grand Prairie Levee District was authorized by Act 325 of 1938, to issue bonds in the sum of $50,000.00, specifically providing that each bond should have printed on its back the following: "This bond principal and interest secured by taxes and by mortgage, sale and revenues of all lands owned by the Grand Prairie Levee District" and also that "the same shall operate as a mortgage on all of said levee district lands until the final payment of said bonds in principal and interest." This mortgage was recorded in the mortgage records of Plaquemines Parish in Book 18, folio 229 on September 30th, 1938. A holder of some of those bonds has intervened herein to resist any attempt to take away the security of his bonds specifically authorized by Act 325 of 1938, and he invokes Section 15 of Article IV of the Constitution. He is entitled to the protection he claims. Louisiana, ex rel. Hubert, Receiver, v. Mayor and Council of the City of New Orleans, 215 U. S. 170, 54 L. Ed. 144, 30 S. Ct. 40; Wolff v. New Orleans, 103 U. S. 385; Louisiana v. New Orleans, 162 U. S. 203.

The only attack against the lease granted by Grand Prairie Levee District to Delta Development Co., Inc., is that Act 99 of 1924, divested the Grand Prairie Levee District of S½ of Section 18, so that the latter could not grant a valid lease thereon in 1936. Grand Prairie Levee District was the recorded owner of the S½ of Section 18 in 1936, and had the authority to grant a mineral lease on its property. Delta Development Co., Inc., is protected by the public records and is also entitled to the protection of Section 15 of Article IV of the Constitution prohibiting the impairment of the obligation of contracts.

Emery v. Orleans Levee Board, 207 La. 386, 21 So. (2d) 418, has been cited by the Orleans Levee Board as deciding the issue of ownership between the Orleans Levee Board and the Grand Prairie Levee District. As stated by the Supreme Court in its per curiam on application for rehearing:

> "The main issue involved in this case is whether or not the Legislature in enacting Act 99 of 1924 legally withdrew the State land from the redemptive statutes in favor of the land owners where the land was acquired by the State at tax adjudication and the owners failed to redeem it within the prescriptive period provided by law.
>
> "Under the construction placed upon the Act by the majority opinion of the Court of Appeal and our interpretation thereof, the State land in question was withdrawn from redemption because it was dedicated for public uses and purposes and for a governmental function several years prior to the time that the plaintiffs attempted to redeem it.

> * * * In short, the State was dedicating the land that it had title to and was not attempting to dedicate private property for a public purpose. * * * Our decision, as well as one of the Court of Appeal in this matter, is confined to the particular land in question which was owned by the State and has no reference whatsoever to other lands privately owned in the area designated by the engineers as the spillway."

Title to the land in controversy in the Emery case was vested in the State of Louisiana. Title to the lands in controversy in this case was absolutely vested in the Grand Prairie Levee District by the Act of Conveyance of January 18, 1905. The Orleans Levee Board points to no deed or instrument of conveyance, nor to any statute that by clear and unmistakable terms divested Grand Prairie Levee District of the absolute title vested in it since 1905. See State, ex rel. Hodge v. Grace, 184 So. 538; Kemper, et al., v. Atchafalaya Basin Levee District, 214 La. 383, 37 So. (2d) 844.

/s/ Bruce Nunez
J u d g e

APPENDIX C.

Thursday, June 30, 1955

Supreme Court of Louisiana

No. 42,057

Richardson & Bass (Louisiana Account)

versus

Board of Levee Commissioners of the Orleans Levee District, et al.

Appeal from the Twenty-fifth Judicial District Court, Parish of Plaquemines; the Honorable Bruce Nunez, Judge.

HAWTHORNE, J.

This is a concursus proceeding instituted by Richardson & Bass (Louisiana Account), the operator of Cox Bay Unit No. 2, in which there are four producing wells designated as Wells Nos. 4-H, 6-H, 7-H, and 14-H. Richardson & Bass deposited in the registry of the court the proceeds of 55 per cent of the royalty oil and gas produced from Cox Bay Unit No. 2, alleged a dispute over ownership of land in this unit and conflicting claims to the royalties, and prayed that the claimants of this royalty oil and gas be cited to appear and assert their respective claims and that there be judgment distributing the sum deposited, as well as any future sums which might accrue and be deposited, to the owner or owners thereof.[1]

[1] The other 45 per cent of the proceeds of the royalty oil and gas produced from Cox Bay Unit No. 2 is conceded to be due to the State of Louisiana under a lease from it, and the State's title is not involved in the present controversy. The lease from the State of Louisiana by its terms covers "All State owned water bottoms, including the beds of all rivers, bayous, lakes and streams * * *" in Cox Bay Unit No. 2.

The claimants of the royalties are the Board of Levee Commissioners of the Orleans Levee District, the Plaquemines Parish Police Jury, which is the governing authority of the Grand Prairie Levee District, and Delta Development Company, Inc. Both the Orleans Levee Board and the Grand Prairie Levee District claim the ownership of land situated in the Parish of Plaquemines described as The S ½ of Section 18, T. 18 S., R. 16 E., which forms part of Cox Bay Unit No. 2. Delta Development Company claims an interest in the royalties under a lease from Grand Prairie Levee District.

The operator, Richardson & Bass, holds two mineral leases both of which cover, among other lands, the property described above. One lease was executed by Grand Prairie and the other by Orleans. The Grand Prairie lease was executed on July 20, 1936, in favor of Delta Development Company, Inc., as lessee, and Grand Prairie Levee District reserved to itself a ⅛ royalty. Subsequently Delta Development Company executed to itself a 1/48 overriding royalty. The Orleans lease was executed in favor of Richardson & Bass on March 30, 1950, and the Orleans Levee Board reserved to itself a 3/16 royalty.

It will thus be seen that the royalties reserved in these acts of lease are:

(1) ⅛ to Grand Prairie and 1/48 to Delta, or a a total of 7/48; and

(2) 3/16, or 9/48, to Orleans.

The land here in controversy covered by these leases was pooled with property covered by a lease from the State of Louisiana, and by these pooling agreements Cox Bay

Unit No. 2 was created. Under these agreements 45 per cent of the royalty oil and gas produced from the unit is payable to the State of Louisiana and is not involved in this suit. The royalties due from the other 55 per cent of the oil and gas produced from the unit are those which are in dispute in this concursus proceeding.

John E. Pottharst, Sr., as owner of $10,000.00 of bonds issued by Grand Prairie Levee District, intervened in this concursus proceeding, espousing the claim of Grand Prairie Levee District to ownership of the land in question and opposing the claim of Orleans Levee Board. Pottharst contends that these bonds are secured by a mortgage on the disputed land, and that, if the claim of the Orleans Levee Board is recognized, the obligation of the contract under which these bonds were issued would be impaired.

The lower court in its judgment recognized Grand Prairie Levee District to be the last record owner of the property described, and recognized its lease to Delta Development Company, Inc., and Delta's sublease to Richardson & Bass (Louisiana Account), the operator. Accordingly the court recognized Grand Prairie Levee District as being entitled to ⅛ of 55 per cent of the minerals produced by the operator, Richardson & Bass (Louisiana Account), from the four producing wells in Cox Bay Unit No. 2, and recognized Delta Development Company as being entitled to 1/48 of 55 per cent of these minerals, and ordered the funds on deposit to be so distributed. The judgment of the lower court also maintained the intervention of John E. Pottharst, Sr., and rejected all claims

of the Orleans Levee Board. From this judgment the Orleans Levee Board appealed.

Claimant Grand Prairie Levee District was created by Act 24 of 1898, which provided for the transfer to it of certain State-owned lands embraced within the area of the district thus created. Pursuant to this act the Register of the State Land Office conveyed to this levee district the S ½ of Section 18, T. 18 S., R. 16 E., which, as we have stated, forms a part of Cox Bay Unit No. 2. This act of conveyance was dated January 18, 1905, and is recorded in Conveyance Book 39, Folio 105, of the records of Plaquemines Parish. Grand Prairie has never divested itself of title to this property and is, according to the conveyance records of Plaquemines Parish, the last record owner of it. This deed from the State is the basis of Grand Prairie's claim to royalties from the producing wells in Cox Bay Unit No. 2.

The Orleans Levee Board claims these royalties, contending that it was vested with title to the land by the provisions of certain acts of the Legislature.

By Act 99 of 1924 the Legislature, in order to protect the City of New Orleans from flood waters of the Mississippi River, authorized the Board of Commissioners of the Orleans Levee District to construct on the east bank of the Mississippi River in Plaquemines Parish a spillway or waste weir, to be located and designed according to plans and specifications to be approved by the State Board of Engineers and the Mississippi River Commission. This act authorized the Orleans Levee Board to acquire by purchase, donation, or expropriation the land necessary for

the construction of such works, and required the Orleans Levee Board to pay for all lands privately owned "within the area covered by the proposed plan from the upper to the lower limits thereof and from the Mississippi River to the sea". The act also provided that the Orleans Levee Board was to arrange with Grand Prairie for the acquisition of the bonded and other indebtedness of the Grand Prairie Levee District in the area to be affected by the proposed work.[2]

Pursuant to the authority of this act the Orleans Levee Board removed approximately 11 miles of the existing levee on the east bank of the Mississippi River in Plaquemines Parish and constructed what is termed a "back levee", located 2500 to 3000 feet back of the Mississippi River, from the lower line of the Bohemia Plantation to the upper line of the Cuselich Canal. Levees at the lower line of the Bohemia Plantation and at the upper line of Cuselich Canal were also constructed to connect the back levee with the existing levees along the east bank of the Mississippi. In the back levee there were certain openings through which in times of high water the waters from the Mississippi River flowed into a large canal, also constructed by the Orleans Levee Board, on the east or sea side of the back levee. After entering this canal the waters then flowed into bayous or streams and ultimately to the sea. This spillway is commonly known as the Bohemia Spillway.[3]

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[2] This same requirement was made as to the indebtedness of the East Bank Levee District.

[3] The case of Emery et al. v. Orleans Levee Board, 207 La. 386, 21 So. (2d) 418, is authority for the proposition that State-owned lands located in the spillway itself were by the provisions of Act 99 of 1924 dedicated and set aside for public use. The lands in the instant case are not in the spillway itself.

Following the adoption of Act 99 of 1924, which authorized the construction of the spillway, the Legislature adopted Act 246 of 1928 which had for its purpose to amend and reenact Act 24 of 1898, the act creating the Grand Prairie Levee District. This amending act provided that all territory therein described, which was located in the Parish of Plaquemines on the east bank of the Mississippi River and adjoining the spillway area on the south, was to be embraced in the limits of, and should constitute, a levee district known and styled as the Grand Prairie Levee District.

In this amending act all lands within the levee district as reorganized were made subject to taxation, local assessment, etc., in order to raise funds to construct and maintain in this new district levees to protect the lands of the district from overflow. In order to provide additional means to carry out the purposes of the act and to furnish resources to enable the levee district to develop and establish a complete levee system in the district, all lands then belonging to the State, or that might thereafter belong to the State, and embraced within the limits of the district as therein constituted were conveyed to the Grand Prairie Levee District, and the district was given power and authority to sell, mortgage, pledge, and dispose of such lands.

It will thus be seen that this 1928 amending act recreated and reestablished the Grand Prairie Levee District in the Parish of Plaquemines in territory below the spillway area, and divested it of all rights and relieved it of all duties in the area of the spillway which it had formerly had under the provisions of Act 24 of 1898.

In 1942 the Legislature adopted Act 311, which, according to its title, was an act "to confirm and quiet the Board of Levee Commissioners of the Orleans Levee District in the ownership and control of all public lands in the Bohemia Spillway when it was constructed by said Levee Board in obedience to Act 99 of the Legislature of 1924".

In the preamble to the 1942 act the Legislature recognized that the Orleans Levee Board was authorized and required by Act 99 of 1924 to construct the Bohemia Spillway in the Parish of Plaquemines in the then Grand Prairie Levee District;[4] that, with the consent and approval of the State Board of Engineers and the United States authorities, the Orleans Levee Board located this spillway in the Grand Prairie Levee District "in the entire area from the lower line of the Bohemia Plantation to the upper line of the Cuselich Canal, embracing all the area in those limits between the Mississippi River and the sea"; that the spillway had been in existence for 16 years; that the Orleans Levee Board had paid to the Grand Prairie Levee District the entirety of its outstanding indebtedness and "was thereby entitled to and invested with all the rights, title and interest" of Grand Prairie Levee District "in the entire area of said spillway where the property was dedicated for said uses", and that the former rights of Grand Prairie Levee District accrued to and became the rights and property of the Orleans Levee Board; that the Legislature by Act 246 of 1928 recreated and reorganized the Grand Prairie Levee District in the section below the spillway, from Cuselich Canal, above, to Cubitt's Gap, 15 miles below its former lower boundary,

[4] In discussing this act we have omitted all reference to the East Bank Levee District.

and that the Grand Prairie Levee District had been removed and ousted from the spillway.

Section 1 of this act reads as follows:

"Be it enacted by the Legislature of Louisiana, **That the right, title, ownership and possession of the Board of Levee Commissioners of the Orleans Levee District to all public lands in the area of the Bohemia Spillway between the Bohemia Plantation, above and Cuselich Canal, below, and from the river to the sea** subject to whatever valid leasehold rights as may have been granted by the Grand Prairie Levee District on lands previously granted and conveyed to it prior to the passage of this Act, **be now confirmed, quieted and acknowledged,** it being recognized that said rights, ownership and possession came into existence when said Orleans Levee Board located and constructed said Bohemia Spillway in the year 1925." (Emphasis ours.)

Both the Orleans Levee Board and the Grand Prairie Levee District are creatures or agencies of the State, and, as between them and the State, the State is at liberty to revoke any grant of land made by it to one district and to vest title in the other. Grand Prairie Levee District acquired the property in question from the State pursuant to the provisions of Act 24 of 1898, and the State under the plain provisions of Section 1 of Act 311 of 1942, which is unambiguous, clear, and not susceptible of judicial interpretation, has confirmed, quieted, and acknowledged the right, title, ownership, and possession of Orleans Levee Board to this property.

This act of 1942 is a legislative conveyance, vesting title in the Orleans Levee Board without necessity of formal act of conveyance. By its very terms it vests in the Levee Commissioners of all public lands "in the area of the Bohemia Spillway between Bohemia Plantation, above, and Cuselich Canal, below, and from the river to the sea", and the S ½ of Section 18, T. 18 S., R. 16 E. is conceded to be in this area.

The 1942 act granted and confirmed the title of the Orleans Levee Board to all public lands in the spillway area in the Parish of Plaquemines.[5] Since this was the purpose of the act, its adoption by the Legislature had the effect of divesting Grand Prairie of its title to any lands in the spillway area; or, in other words, the act effectively revoked the grant to Grand Prairie made by Act 24 of 1898 of the lands in the spillway area and vested title to these lands in the Orleans Levee Board. In adopting the 1942 act the Legislature recognized and took cognizance of the provisions of Act 99 of 1924, authorizing the construction of the spillway, and Act 246 of 1928, recreating the Grand Prairie Levee District and ousting it from the area of the spillway.[6]

As we have heretofore pointed out, Section 1 of Act 311 of 1942 confirmed the title of the Orleans Levee Board to all public lands in the spillway area. This confirmation of title, however, was made **"subject to whatever valid**

[5] The Legislature by the plain terms of Act 311 of 1942 vested, quieted, and confirmed title in the Orleans Levee Board to all public lands within the area described in the act, and did not convey title to any water bottoms, such as the beds or bottoms of rivers, bays, bayous, lakes, and streams.

[6] Act 99 of 1924 was expressly repealed by Section 2 of the Revised Statutes of 1950.

leasehold rights as may have been granted by the Grand Prairie Levee District on lands previously granted and conveyed to it, prior to the passage of this Act". (Emphasis ours.)

Act 99 of 1924 authorizing the construction of the spillway did not locate or describe the spillway area. It provided only for the construction of the spillway in the Parish of Plaquemines on the east bank of the Mississippi River, to be located and designed according to plans and specifications to be approved by the State Board of Engineers and the Mississippi River Commission. This act authorized the Orleans Levee Board to acquire by purchase or expropriation all lands privately owned within the area covered by the proposed plan from the upper to the lower limits thereof and from the Mississippi River to the sea. Even this provision, however, did not fix the upper and lower limits of the proposed spillway. In other words, the Legislature in 1942 obviously took full cognizance of the fact that anyone relying on the public records and even on the provisions of the 1924 act itself could not definitely ascertain the spillway area.

The 1942 act did, however, definitely fix the spillway area as being located "between the Bohemia Plantation, above, and Cuselich Canal, below, and from the river to the sea". Since this area had not been definitely fixed by the 1924 act, the Legislature saw fit in the 1942 act, which confirmed and quieted the title of the Orleans Levee Board to all public lands in this area, to provide—as it had a right to do—that the title of Orleans Levee Board was subject to whatever valid leasehold rights as may have been granted by Grand Prairie Levee District prior to the

passage of the 1942 act on lands which had been previously granted or conveyed to the Grand Prairie Levee District.

The S ½ of Section 18, which had been conveyed to Grand Prairie Levee District by the State in 1905, and of which it was the owner of record, was leased by Grand Prairie to Delta Development Company in 1936, before the adoption of Act 311 of 1942. Consequently, under the provision which we have quoted from Section 1 of the 1942 act, the Orleans Levee Board's title was confirmed subject to these valid leasehold rights of Delta Development Company. In other words, the lease from Grand Prairie to Delta conferred valid leasehold rights on Delta and its sublessee, Richardson & Bass, the operator, and Delta Development Company is entitled to receive the overriding royalty reserved by it in its sublease to Richardson & Bass. Orleans Levee Board, however, as the present fee owner of the property, is entitled to receive the lessor's royalty reserved in the Grand Prairie lease. Grand Prairie, having been divested of title, is not entitled to any royalty from the four producing wells in Cox Bay Unit No. 2.

Since there was in existence an oil and gas lease on this property executed in 1936 by Grand Prairie to Delta Development Company, the subsequent oil and gas lease granted by Orleans to Richardson & Bass in 1950 is invalid and has no force and effect, the royalty reservation contained in the Orleans lease has no force and effect, and Richardson & Bass is not bound to pay any royalties under the Orleans lease.

The land here involved, the S ½ of Section 18, is located on the east or sea side of the so-called back levee

constructed by Orleans Levee Board, and approximately one mile from this back levee. It is argued that this land has never been a part of the Bohemia Spillway, is wholly outside the limits of the spillway, and has never been inundated by, or received, any waters from the Mississippi River, and that for these reasons Grand Prairie has never been divested of its title to the land by any of the acts of the Legislature relied upon by the Orleans Levee Board.

It is true that these lands are not located in the spillway itself, that is, between the river and the back levee. Be that as it may, the Legislature in the 1942 act confirmed and quieted title in the Orleans Levee Board to all public lands in the **spillway area** and defined this area with certainty to be the area between the Bohemia Plantation, above, and Cuselich Canal, below, and from the river to the sea. The lands here involved are in the spillway area as so defined.

Appellees argue, however, that Act 311 of 1942, which we have held quieted, confirmed, and acknowledged the right, title, and ownership of the Orleans Levee Board to the lands in question, is unconstitutional in that this act violates Article 3, Section 16, of the Louisiana Constitution, which provides that every statute enacted by the Legislature shall embrace but one object and shall have a title indicative of its object.

In Ricks v. Department of State Civil Service, 200 La. 341, 8 So. (2d) 49, this court pointed out that it was not the purpose of this constitutional provision to require that the title be an index to the contents of the act, or that every end and means convenient or necessary for the ac-

complishment of the general object of the act be set out at length in the title, but it is deemed sufficient under the article if the act contains but one object and if the object be fairly stated, although it be expressed in general terms, in the title of the act. Moreover, all things proper or necessary to carry out the general object as stated in the title are deemed to be within the scope of the title. The test is primarily whether the various provisions of the act are germane to the object of the act as expressed in the title.

Obviously Act 311 of 1942 has but one object, and we think the title is clearly indicative of that object and that the provisions of the act are germane to the object as expressed in the title.

Appellees next argue that the 1942 act violates Article 4, Section 12, of the Louisiana Constitution, which provides, among other things, that the funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged, or granted to or for any person or persons, associations or corporations, public or private.

In Fisher v. Steele, 39 La. Ann. 447, 1 So. 882, this court held that levee districts were not political corporations within the scope of this article of the Constitution.[7] Morever, by the act quieting title in the Orleans Levee Board the State was not parting with title within the meaning of this constitutional provision, but was only placing the property under the control of one of its agencies for supervision and administration. The land, to all practical intents and purposes, is still the property of the

[7] Art. 56 of the Constitution of 1879.

State. See State ex rel. Board of Commissioners of Tensas Basin Levee District v. Grace, 161 La. 1039, 109 So. 830.

It is next argued that the 1942 act is an attempt by the Legislature to interpret Act 99 of 1924, and that it therefore violates Sections 1 and 2 of Article 2 of our state Constitution because the interpretation of a legislative act is strictly and solely a judicial function.

As we have said, the Legislature in adopting the 1942 act recognized and took cognizance of the provisions of Act 99 of 1924, but the 1942 act is not a legislative interpretation of the 1924 act. The 1942 act stands alone. It confirmed the title of the Orleans Levee Board to all lands in the spillway area. The fact that this act does stand alone is evidenced by the fact that Act 99 of 1924 has been repealed.

It is still further argued that, if the 1942 act should be construed to give effect to the disposition of the lands of Grand Prairie Levee District by Act 99 of 1924, an act which appellees contend is illegal, then the 1942 act violates Article 4, Section 4, of our Constitution, which prohibits the Legislature from enacting any local or special law legalizing the unauthorized or invalid acts of any officer, servant, or agent of the State, or of any parish or municipality thereof.

Although the Legislature treated this statute as a local or special law, we have grave doubt that it is such a law. See Knapp et al. v. Jefferson-Plaquemines Drainage District, 224 La. 105, 68 So. (2d) 774. Moreover, we have not construed the 1942 act as giving effect to any disposition of Grand Prairie's lands that might have been made

in the 1924 act, but have held that the 1942 act, standing alone, confirmed and quieted title in the Orleans Levee Board.

The intervenor, John E. Pottharst, Sr., as the owner of $10,000.00 of bonds issued by the Grand Prairie Levee District in September, 1938, contends that his bonds are secured by a mortgage on the property here involved, the S ½ of Section 18, T. 18 S., R. 16 E. He argues that, if this court should recognize that Act 311 of 1942 confirmed title to these lands in the Orleans Levee Board, then that act would be unconstitutional, in violation of Article 4, Section 15, of the Louisiana Constitution and Article 1, Section 10, of the United States Constitution, both of which provide that no law impairing the obligation of contracts shall be passed. Appellee Grand Prairie Levee District also makes this same contention.

At the time these bonds were issued in September of 1938, the Grand Prairie Levee District, as we have pointed out, had been recreated, reestablished, and reorganized by the provisions of Act 246 of 1928 in territory below the spillway area and had been divested of all its rights and relieved of all its duties in the area of the spillway. These bonds were issued under the provisions of Sections 12 and 19 of Act 24 of 1898 as amended by the provisions of Act 325 of 1938. Although this 1938 act provides that, when bonds are issued thereunder, the bonds shall be secured by a mortgage on all said levee district lands, this could only mean that these bonds are secured by a mortgage on the property within the confines of the levee district itself as created and defined by the act of 1928. The lands here in question are not

in this new levee district, but are located in the spillway area from which Grand Prairie Levee District has been ousted. Consequently Pottharst has no mortgage on these lands for the payment of the bonds held by him, and his bonds are secured only by mortgage and taxation on all lands owned by the Grand Prairie Levee District as reorganized and reconstituted by the 1928 act. Therefore the 1942 act cannot be said to impair the obligation of the contract under which these bonds were issued.

As we have shown, the royalties stipulated in the Orleans lease are greater than those which are due under the Grand Prairie lease. At the beginning of this concursus Richardson & Bass, operator of Cox Bay Unit No. 2, deposited in the registry of the court a sum sufficient to pay royalties under either lease. Since we have concluded that the Orleans Levee Board is entitled to receive 1/8 of 55 per cent of the royalties due under the Grand Prairie lease and that Delta Development Company is entitled to receive 1/48 of 55 per cent of such royalties under its sublease to Richardson & Bass, there will be a surplus in the funds deposited in the registry of the court which should be returned to Richardson & Bass, the operator, in accordance with the prayer of its petition.

Because of the conclusion which we have reached in this case, we have decided to set aside the judgment of the district court and to recast it in its entirety, as follows:

It is now ordered that the judgment appealed from be set aside.

It is ordered that all claims of the Plaquemines Parish Police Jury, as governing authority of Grand

Prairie Levee District, to any part of the funds deposited in the registry of the court be denied, as well as its claim to the proceeds of any future royalties from Wells Nos. 4-H, 6-H, 7-H, and 14-H in Cox Bay Unit No. 2.

It is further ordered that the Board of Levee Commissioners of the Orleans Levee District recover ⅛ of 55 per cent of the proceeds of the oil and gas produced by Richardson & Bass (Louisiana Account) from the four wells designated above; that Delta Development Company, Inc., recover 1/48 of 55 per cent of the proceeds of the oil and gas produced from these wells; that each be paid so much of the funds deposited in the registry of the court as represents the value of the interest of each, and that after such distribution any surplus remaining in the funds so deposited be returned to Richardson & Bass.

It is further ordered that the intervention of John E. Pottharst, Sr., be dismissed at his costs.

It is ordered that all costs of these proceedings be paid from the fund in the registry of the court to be distributed to Orleans Levee Board and Delta Development Company, Inc., and that these litigants have judgment against Plaquemines Parish Police Jury, as governing authority of Grand Prairie Levee District, and John E. Pottharst, Sr., for such costs insofar as allowed by law.

The clerk of court is ordered to distribute the funds on deposit in the registry of the court in accordance herewith.

Supreme Court of Louisiana

Richardson & Bass (Louisiana Account)

versus

Board of Levee Commissioners of the Orleans Levee District, et al.

HAMITER, Justice, dissenting.

When the State of Louisiana transferred the land in dispute to the Board of Commissioners of the Grand Prairie Levee District, by a written instrument that was duly recorded in the Conveyance Records of Plaquemines Parish, title thereto was vested absolutely in the transferee. Section 11 of Act 24 of 1898; State ex rel. Hodge et al. v. Grace et al., 191 La. 15, 184 So. 527; Kemper et al. v. Atchafalaya Basin Levee District, 214 La. 383, 37 So. (2d) 844. This being true, a divestiture of that absolute title could be accomplished by the Legislature only through a statute expressing an intention to that effect which is "clear and unmistakable in its terms, free from and devoid of implication." State ex rel. Hodge v. Grace, supra. And "in the absence of such intention clearly expressed or evidenced therein this court should find that the Legislature had no such intention." Kemper et al v. Atchafalaya Basin Levee District, supra.

The important and primary question to be determined herein, hence, is whether the Legislature has by statute expressed clearly and unmistakably an intention to divest the Grand Prairie Levee District of its absolute title to the disputed property and vest it in the Orleans Levee District.

Contending that this question should be answered in the affirmative, the Orleans Levee District relies on Act No. 99 of 1924, Act No. 246 of 1928 and Act No. 311 of 1942. Obviously, the first of these statutes does not support the contention. Therein, nothing is said about **public** lands. The 1924 act authorized the Orleans Levee District "* * * to construct or cause to be constructed on the east bank of the Mississippi River in the Parish of Plaquemines a spillway or waste weir, or other works, so located and designed according to plans and specifications as shall have been approved by the State Board of Engineers and the Mississippi River Commission"; it granted authority for acquiring "* * * by purchase, donation or expropriation **the lands or other property necessary for the construction of such works * * ***"; it required such Levee District, "* * * as a condition precedent to removing any levees or taking possession of any property, to acquire by purchase or expropriation and to pay for all lands and property privately owned **within the area covered by the proposed plan** from the upper to the lower limits thereof and from the Mississippi River to the sea"; and it directed the State Board of Engineers "* * * to cooperate with the said Board of Levee Commissioners of the Orleans Levee District in the preparation of the necessary plans and the construction of the necessary works, the cost thereof to be paid by the Orleans Levee District". In other words, under the legislation, the State Board of Engineers were to design, locate, and supervise the building of, the spillway, and the Orleans Levee District would finance and cause its construction after acquiring and paying for all needed privately owned lands "within the area covered by the proposed plan" ("area", according to Webster's New International Dic-

tionary, means a particular extent of surface), which plan would involve only the property lying within the spillway's upper and lower limits and within its limits between the Mississippi River and the sea.

Of course, the 1924 act also authorized and directed the Orleans Levee District to assume the entire bonded indebtedness of the Grand Prairie Levee District. However, this is of no significance in determining the primary question under consideration. The assumption was provided for and consummated because at that time, according to the record, the only usable (protected from the gulf's storm waters and high tides) and taxable lands within the Grand Prairie Levee District lay between the then existing front levee and the "back levee"—the area which was to become the Bohemia Spillway; and being thereby deprived of all tax revenues the Grand Prairie Levee District was justly entitled to be relieved of its bonded indebtedness, to the retirement of which such revenues had been pledged.

Incidentally, as the majority opinion correctly points out, the land in dispute herein is not within the spillway. It lies approximately a mile east of the "back levee"—the spillway's eastern or seaward limit.

Neither does the 1928 statute indicate a clear intention of the Legislature to divest the absolute title of Grand Prairie Levee District. Therein, that district's boundaries were redefined; private property which could be taxed was provided for; and to it was conveyed all state owned land in the recreated area. No portion of the act contains words of divestiture or any language indi-

cating that the Orleans Levee District was to be the recipient of lands theretofore conveyed by absolute title to the Grand Prairie Levee District.

With reference to Act 311 of 1942, which is principally relied on by the majority as divesting Grand Prairie Levee District of its absolute title and legislatively vesting it in the Orleans Levee District, Section 1 thereof recites: "Be it enacted by the Legislature of Louisiana, That the right, title, ownership and possession of the Board of Levee Commissioners of the Orleans Levee District **to all public lands in the area of the Bohemia Spillway** between Bohemia Plantation, above, and Cuselich Canal, below, and from the river to the sea * * * * be now confirmed, quieted and acknowledged, it being recognized that said rights, ownership and possession came into existence when said Orleans Levee Board located and constructed said Bohemia Spillway in the year 1925." (Emphasis mine).

I cannot agree that this language discloses a clearly expressed and unmistakable intention of the Legislature to recognize and confirm the Orleans Levee District as the owner of **all public lands** in Plaquemines Parish east of the Mississippi River lying between the river and the sea, including the disputed property which admittedly lies without, and is a mile distant from, the Bohemia Spillway.

In the first place the title to the 1942 act indicates that the public lands intended to be affected were those lying only within the spillway itself—that is, between the front and back levees. It recites: "To confirm and quiet the Board of Levee Commissioners of the Orleans Levee

District in the ownership and control of all public lands **in the Bohemia Spillway when it was constructed by said Levee Board in obedience to Act 99 of the Legislature of 1924."** And it may be recalled that the mentioned 1924 act authorized the Orleans Levee Board to acquire land "necessary for the construction of such works" and, in connection therewith, it required such board to pay for all privately owned lands "within the area covered by the proposed plan." (Emphasis mine).

In fact, the above quoted Section 1, considered along with the title (consideration of the title is permissible in determining legislative intent if the language of the statute is ambiguous, as here), can well and easily be similarly construed; for it specifically relates to all public lands in the area of the Bohemia Spillway * * * *." True, following the reference to that particular extent of land surface are the words "between Bohemia Plantation, above, and Cuselich Canal, below, and from the river to the sea". But this language could have been used in the sense of merely locating the spillway.

Moreover, it seems to me that if the Legislature had intended to confirm title in the Orleans Levee District to that vast area of land lying between the river and the sea (and by implication, incidentally, to divest Grand Prairie of its absolute title), references to the spillway lands and to Act 99 of 1924 would have been unimportant and unnecessary. The confirmation could have been unimportant and unnecessary. The confirmation could have been effectively accomplished by omitting those references entirely.

Again, the sixth and seventh "Whereas" provisions of the 1942 legislation suggest that the confirmation of title was restricted to the spillway property. Thus, the former declared that "* * * the said Orleans Levee Board did in obedience to said act agree to pay and has paid to the Grand Prairie Levee Board and to the East Bank Levee Board the entirety of their outstanding indebtedness * * * and was thereby entitled to and invested with all the rights, title and interest of each of said boards in the **entire area of said spillway where the property was dedicated for said** uses, * * *." And the latter stated: "* * * said former rights of both of said two former levee boards accrued to and became the rights and property of said Orleans Levee Board, save that same were thereafter non-taxable and could not be alienated or sold, as **same were intended for and dedicated to the purposes of said spillway and have been so used** for the past sixteen years by the Orleans Levee Board, * * *." (Emphasis mine).

Finally, if the interpretation placed on the 1942 act by the majority be correct (as I understand the majority opinion it holds that the statute granted to the Orleans Levee District title to **all public lands** lying between the Mississippi River and the sea which are situated in the vicinity of the Bohemia Spillway) the Orleans Levee District, as a result of the legislation, now owns (in addition to the spillway land the property in dispute) countless thousands of acres of land comprising that broad expanse of territory which had formerly belonged to the state and to several of its agencies (including a school district). I can conceive of no good reason for the Legislature making such a grant. Those many

thousands of acres of public land (other than the spillway property) had no relationship whatsoever to the construction and operation of the Bohemia Spillway—a project which the legislation in question solely concerned.

My conclusion is, therefore, that the Legislature has not expressed clearly and unmistakably an intention to divest the Grand Prairie Levee District of the disputed property and to transfer it to the Orleans Levee District. Accordingly, I am of the opinion that the judgment of the district court should be affirmed.

I respectfully dissent.

APPENDIX D.

Richardson & Bass (Louisiana Account) vs. The Board of Levee Commissioners of the Orleans Levee District, et al.	No. 42,057 Supreme Court of Louisiana. Monday, February 20, 1956

* * * * * *

Appeal from the Twenty-fifth Judicial District Court for the Parish of Plaquemines; Honorable Bruce Nunez, Judge.

* * * * * *

ON REHEARING.

McCALEB, Justice.

Following the rendition of our original decision, all litigants adversely affected thereby in any respect, viz.,—Plaquemines Parish Police Jury, as governing authority of Grand Prairie Levee District; Board of Levee Commissioners of the Orleans Levee District and John E. Pottharst, Sr., timely applied for a rehearing. The application of Plaquemines Parish Police Jury was refused as we were and still are convinced of the correctness of our holding that the title and ownership of the Grand Prairie Levee District to any land embraced in the Bohemia Spillway area was transferred to the Orleans Levee District by Act 311 of 1942 and that this legislative grant invested Orleans Levee Board with legal title "* * * without necessity of formal act of conveyance". However, we granted the other applications believing that the claim of Orleans Levee Board, for its 3/16ths con-

tractual royalty, and that of Pottharst, for asserted recognition of his right of mortgage on the leased land, warranted further consideration.

The case is fully stated in our original opinion and a repetition of the pleadings and facts would be superfluous. Suffice it to say the only issues presently before us are (1) whether Orleans Levee Board is entitled to 3/16ths or 9/48ths royalty on production under its lease to Richardson & Bass, dated March 30th, 1950, and whether its royalty interest is subject to the 1/48th overriding royalty of Delta Development Co. Inc., and (2) whether the original decree adversely affected the contractual right of the intervening bondholder, John E. Pottharst, Sr.

In our original opinion, we upheld the validity of the lease granted by Grand Prairie Levee District in favor of Delta Development Co. Inc., in which the District reserved to itself a 1/8th royalty, forasmuch as Grand Prairie was the record owner of the public lands affected by the lease at the time of its execution on July 20th, 1936. We reasoned that, since, by specific provision of Act 311 of 1942, the transfer of title to Orleans Levee Board was subject to the valid leasehold rights previously granted by Grand Prairie, the former merely succeeded to whatever rights the latter possessed under the lease and therefore was entitled to the 1/8th royalty provided for therein.

Orleans Levee Board contends that it is, nevertheless, entitled to receive the 3/16ths royalty agreed upon by Richardson & Bass in the lease of March 30th 1950

and it further maintains that this royalty should not be burdened with the 1/48th overriding royalty reserved by Delta Development Co. Inc., in its sublease to Richardson & Bass, dated December 27th 1950, for the reason that the 1936 lease executed by Grand Prairie Levee District is invalid.

In assailing the legality of the 1936 lease, counsel for Orleans Levee Board do not contend that it terminated or was forfeited because of non-production or failure to pay delay rentals or for any defect of form in confection.[1] They merely reiterate the argument advanced by them on original hearing that Grand Prairie was completely divested of title to the property affected by the lease by Act 99 of 1924 or, in any case, by Act 246 of 1928.

Because of the earnestness of counsel, we have reconsidered our original views and, as we have above indicated, entertain no doubt as to the soundness of our ruling that Orleans Levee Board did not acquire title to the lands situated in the Bohemia Spillway area before the effective date of Act 311 of 1942. Prior to that legislative grant, Grand Prairie Levee District unquestionably had a clear title to the land covered by the mineral leases

[1] The record shows that the July 20th, 1936 lease of Grand Prairie Levee District to Delta Development Co. Inc. covered a large acreage and included all of the lands owned by Grand Prairie in the Levee District. Subsequently, Delta Development Co. Inc. subleased a portion of the property covered by the lease to Gulf Refining Company and the latter commenced drilling operations in 1938 which were apparently successful. In January of 1950, Delta Development Co. Inc. filed suit against the Plaquemines Parish Police Jury, the governing body of Grand Prairie Levee District, and a judgment was rendered by the 25th Judicial District Court decreeing that Delta's lease of July 20th 1936 was still in full force and effect since production of oil in paying quantities had been maintained from July 10th 1938.

involved herein which had been duly recorded in the conveyance records of Plaquemines Parish. See Section 11 of Act 24 of 1898; State ex rel Hodge v. Grace, 191 La. 15, 184 So. 527 and Kemper v. Atchafalaya Basin Levee District, 24 La. 383, 37 So. (2d) 844.

Act 99 of 1924, under which the construction of the Bohemia Spillway was authorized, did not divest Grand Prairie Levee District of its prior ownership of lands within that area. Nor was a divestiture of title effected by Act 246 of 1928. That Act redefined the boundaries and jurisdiction of Grand Prairie and there is nothing in the statute indicating that Orleans Levee District was to or did acquire ownership of any of the lands then owned by Grand Prairie which were situated within the area of the Bohemia Spillway.

Furthermore, Act 311 of 1942, despite its multifarious and inept use of the words "confirmed", "quieted" and "acknowledged" in describing the grant and transfer of title of the public lands in the Bohemia Spillway area to Orleans Levee Board, affirmatively recognized that Grand Prairie Levee District was the immediate holder of the legal and existing title thereto for the grant to Orleans is made "* * * subject to **whatever valid leasehold rights** as may have been granted by the Grand Prairie Levee District on lands previously granted and conveyed to it **prior to the passage of this Act,** * * *". (Emphasis ours). Hence in keeping with this provision, it is manifest that the title of Orleans Levee Board was burdened with the leasehold rights which had been granted by Grand Prairie in favor of Delta Development Co. Inc.

On the other hand, our present view is somewhat different from that previously announced in respect of the royalty percentage which Orleans Levee Board is to receive. We originally concluded that, in view of the validity of the 1936 lease, Orleans Levee Board, by its acquisition of title in 1942, merely stepped into the shoes of Grand Prairie and was entitled to no more than the 1/8th royalty which would have been recoverable by Grand Prairie under that lease.

We are now of the opinion that, as Orleans Levee Board became the owner of the land in 1942, it had the right to lease it in 1950 to Richardson & Bass, such lease being burdened by "whatever valid leasehold rights" Delta Development Co. Inc. had acquired under the 1936 lease. However, since Orleans Levee Board's lessee, Richardson & Bass, subsequently acquired all of Delta's leasehold rights under the 1936 lease, save the reservation by Delta of a 1/48th overriding royalty, the latter is the only valid outstanding leasehold right to which Orleans Levee Board is subjected. Richardson & Bass, the plaintiff herein, could not and does not question in this concursus proceeding the validity of the 1950 lease granted it by Orleans Levee Board. Nor does it claim that the Levee Board has not performed and is not now fulfilling all of the obligations required of it under that lease.[2] In these circumstances there being no other valid outstanding leasehold right, Orleans Levee Board is entitled to receive its contractual 3/16ths royalty, subject to the 1/48th overriding royalty of Delta Development Co. Inc. or a net royalty of 8/48ths.

[2] In any case, Richardson & Bass, being a tenant in possession, is in no position to assert leasehold rights adverse to that of its lessor, Orleans Levee Board. Weil v. Segura, 178 La. 421, 151 So. 639 and Sabine Lumber Co. v. Broderick, (C. C. A. 5) 88 Fed. (2d) 586.

It remains only to consider the claim of the intervenor, John E. Pottharst, Sr. He alleges, in substance, that he is the owner of $10,000 of bonds which are part of a total $50,000 issue of Grand Prairie Levee District authorized by Act 325 of 1938; that the principal and interest of these bonds are payable out of the funds derived from the collection of taxes and revenue of Grand Prairie Levee District and that, as provided in the statute, "the same shall operate as a mortgage on all of said Levee District lands until the final payment of said bonds in principal and interest". He further alleges that the 1936 mineral lease between Grand Prairie and Delta Development Co. Inc. was of record at the time the bonds were issued; that all of the income and revenue derived by Grand Prairie from the mineral lease are part of the security for the payment of the principal and interest of the bonds and that any diversion of the revenues therefrom to Orleans Levee Board would constitute an impairment of the contract under which the bonds were issued in violation of Section 15 of Article 4 of the Louisiana Constitution and of Section 10 of Article I of the Constitution of the United States. He prays that he be allowed to intervene in the proceeding, aligned with Plaquemines Parish Police Jury as governing body of Grand Prairie Levee District and that, in due course, the latter be recognized as owner of the lands covering the mineral leases herein and entitled as such to all income and the revenue accruing under the 1936 mineral lease.

In our original opinion, we rejected the intervention on the ground that the bonds issued by the Grand Prairie Levee District in 1938 did not operate as a mortgage on the land covered by the mineral leases herein in

view of the reestablishment and reorganization of the Grand Prairie Levee District by Act 246 of 1928 in territory below the Bohemia Spillway area and that a fair construction of Act 325 of 1938, providing that the bonds issued by Grand Prairie Levee District shall be secured by a mortgage on all said Levee District lands, meant that these bonds were secured only by a mortgage on the property situated within the confines of the Levee District as reestablished by Act 246 of 1928.

Being doubtful of the correctness of this ruling, we granted intervenor a rehearing on his argument that he is entitled to have it recognized that his bonds are secured by a mortgage on the land under lease. However, as will be seen from the statement of intervenor's pleadings, it does not appear that he is seeking the relief demanded in this Court. He makes no claim therein that his bonds are in default or that his rights as mortgagee of the land might be impaired by the outcome of this litigation or even that the issues in this case necessarily require that a determination be made of whether the transfer of the ownership of the lands in the Bohemia Spillway area from Grand Prairie to Orleans Levee Board by the 1942 Act impaired the security given him by law. Actually, his only plea is that Grand Prairie is entitled to be recognized as owner of a 1/8th royalty interest in all production from the 1936 mineral lease and that, unless this is adjudged, the security of his bonds will be unconstitutionally diminished because Act 325 of 1938 provides that the bonds issued thereunder shall be secured, among other things, by the revenues and income of all lands owned by Grand Prairie Levee District.

Obviously, this provision relative to the bondholder's security in revenues from lands is applicable only to the mortgaged lands while they are owned by the Levee District. Grand Prairie had long since been divested of the land subject to the leases herein when production was obtained by Richardson & Bass and therefore none of the revenue derived therefrom belongs to Grand Prairie or is subject to the payment of the bonds which are not even alleged to be in default. Accordingly, as the case merely involves the recognition of ownership of certain oil production, there is no necessity and really no issue for determination respecting the rights of a bondholder of Grand Prairie Levee District to have recognition of his mortgage and any opinion expressed by us in this proceeding would be purely advisory. Since the intervention could only be considered on the basis that the bondholder had an interest in maintaining Grand Prairie's position, the rejection of that Levee District's claim operates as ground for its dismissal.

For the foregoing reasons, the third paragraph of our original decree is amended so as to read as follows:

> It is further ordered that the Board of Levee Commissioners of the Orleans Levee District recover 8/48ths of 55 per cent of the proceeds of the oil and gas produced by Richardson & Bass (Louisiana Account) from the four wells designated as Wells Nos. 4-H, 6-H, 7-H and 14-H in Cox Bay Unit No. 2; that Delta Development Company, Inc. recover 1/48th of 55 per cent of the proceeds of the oil and gas produced from these wells and that each be paid so much of the funds deposited in the

Registry of the Court as represents the value of these designated interests.

As thus amended, the original decree herein is reinstated as the judgment of this Court. The Board of Levee Commissioners of the Orleans Levee District is reserved the right to apply for a second rehearing.[3]

[3] The reason for this is that some of the members of the Court, after a careful examination of the record, entertain doubt as to the validity of the leasehold rights claimed by Delta Development Co. Inc.

SUPREME COURT OF LOUISIANA

Richardson & Bass (Louisiana Account)

v.

The Board of Levee Commissioners of the Orleans Levee District, et al.

No. 42,057

HAMITER, Justice, concurring in part and dissenting in part.

I concur in the conclusion that Delta Development Company, Inc., obtained a good and valid lease from Grand Prairie Levee District and that it presently owns a 1/48th overriding royalty by virtue of a reservation in its sublease to Richardson and Bass. Otherwise, I dissent, adhering to the views which I expressed on the original hearing of the cause.

SUPREME COURT OF LOUISIANA

No. 42,057

Richardson & Bass (Louisiana Account)
versus
The Board of Levee Commissioners of the Orleans Levee District, et al.

ON REHEARING.

HAWTHORNE, J., Dissenting in Part.

I dissent only from that portion of the majority opinion on rehearing which awards to Orleans Levee District 3/16 (9/48) of 55 per cent of the proceeds from these wells minus 1/48 overriding royalty to Delta Development Company. It is my view that the award to Orleans and Delta as made in the opinion on original hearing is correct.

APPENDIX E.

ACT No. 325

House Bill No. 538 By Mr. Leovy

AN ACT

To amend and re-enact Sections 12 and 19 of Act 24 of 1898, entitled—"An Act to create the Grand Prairie Levee District and the Board of Commissioners therefor; to define their powers and duties; to prescribe the duties of the State Engineers in relation to said Board; to provide a revenue therefor by taxation, forced contribution and special assessment; to grant certain lands to said Board for levee purposes, and to exempt same from taxation until sold by said Board; to authorize the Board to issue and negotiate its bonds and to provide for the payment of same; to define misappropriation of the funds and property of the Board by the officers thereof and to provide a penalty therefor; to put this act into force and to repeal all laws in conflict herewith."

Section 1. Be it enacted by the Legislature of Louisiana, That Sections 12 and 19 of Act 24 of 1898 be and the same are hereby amended and re-enacted so as to read as follows:

Section 12. That for the purpose of raising further additional funds for said District for the purpose of constructing and maintaining a river front levee between the lower side of Baptiste Collette Gap to Main Pass of Cubit's Gap, said Board of Commissioners is hereby authorized and empowered to issue bonds to the total amount of not exceeding Fifty Thousand ($50,000.00) Dollars in

such sums and denominations as said Board may prescribe not less than Five Hundred ($500.00) Dollars each; said bonds shall be payable to bearer, shall be signed by the President of the Board officially and attested by the signature of the Secretary and seal of said Board of Commissioners, and shall each have printed on the back the following: "This bond, principal and interest, secured by taxation and by mortgage, sale and revenues of all lands owned by the Grand Prairie Levee District, all of said bonds to become due in twenty (20) years from date thereof and payable in ten (10) years from date thereof at the option of the Board of Commissioners, and they shall bear interest at a rate not to exceed six (6%) per centum per annum from the date of their issue, said interest to be evidenced by coupons attached to said bonds payable semi-annually at the office of the State Treasurer or fiscal agent of the State in the City of New Orleans out of the funds hereinabove provided. The Board of Commissioners of said Levee District shall record in the Mortgage Office of the Parish of Plaquemines, La., a copy of one of said bonds with a certificate signed by its President and Secretary, bearing the seal of said Board, attesting to the total amount of such bonds issued hereunder, and the same shall operate as a mortgage on all of said Levee District lands until the final payment of said bonds in principal and in interest. All or any part of the said bonds herein authorized may be called and redeemed by the Board of Commissioners under such terms and conditions as may be mutually agreed upon by and between the said Board of Commissioners and the holders of said bonds.

Section 19. That the bonds authorized herein shall be deposited with the State Treasurer and as soon as the same

shall have been printed and before the same shall have been signed by the President of said Board officially and attested by the signature of the Secretary and seal of the Board of Commissioners as provided for herein, said Treasurer shall receipt for same and said bonds shall be registered at the office of the auditor who shall keep a record of the same and such bonds shall not be withdrawn from the Treasurer of the State except upon the warrant of the Auditor of Public Accounts issued upon the order of the President of the Board of Commissioners countersigned by the Secretary and in pursuance of a resolution of said Board adopted at a regular meeting; and the Auditor and Treasurer of the Board shall keep a record of said bonds subject to the inspection by any person interested. Bonds thus withdrawn from the treasury shall be conclusively presumed to have been emitted, issued and negotiated by said Board in compliance with all conditions of law and it shall be lawful at any time after the passage of this Act for any and all persons and corporations to invest trust funds in said bonds.

Section 2. That all laws or parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved by the Governor: July 6, 1938.

A true copy:

E. A. CONWAY,

Secretary of State.

APPENDIX F.

ACT No. 311

Senate Bill No. 66 By Messrs. Ott, Arras and Lanier

AN ACT

To confirm and quiet the Board of Levee Commissioners of the Orleans Levee District in the ownership and control of all public lands in the Bohemia Spillway when it was constructed by said Levee Board in obedience to Act 99 of the Legislature of 1924.

WHEREAS, there has been exhibited to the Legislature due proof of the publication of notice of intention to apply for the passage of this act in conformity with Section 6 of Article 4 of the Constitution of this State, and

WHEREAS, by Act 99 of 1924, the Board of Levee Commissioners of the Orleans Levee District were authorized and required to locate and construct a spillway in the Parish of Plaquemines, east bank, in the then Grand Prairie and East Bank Levee Districts, and

WHEREAS, with the consent and approval of the Board of State Engineers and the United States authorities, the said Orleans Levee Board did locate said spillway in the Grand Prairie Levee District and in the East Bank (back) Levee District in the entire area from the lower line of the Bohemia Plantation to the upper line of the Cuselich Canal, embracing all the area in those limits between the Mississippi River and the sea, and

WHEREAS, the Grand Prairie Levee Board at that time had a right of entry of all State or public lands in

said area when said Act 99 of 1924 was proposed and passed as well as the right of taxing all lands in said area, both ad valorem and acreage, which latter right was shared in by the East Bank Levee District, and in order to protect the rights of the bondholders and other creditors in said districts, the payment of which debts were dependent on said rights, and

WHEREAS, in order to make Act 99 of 1924 Constitutional, the said Orleans Levee Board, before divesting said two boards of existing rights in said area, was required by Section 5 of said Act to arrange with said two boards as to the payment of such share of their indebtedness as would have become rendered worthless by said divestiture, and

WHEREAS, the said Orleans Levee Board did in obedience to said act agree to pay and has paid to the Grand Prairie Levee Board and to the East Bank Levee Board the entirety of their outstanding indebtedness amounting in all to One Hundred and Eighty-three Thousand Dollars, and was thereby entitled to and invested with all the rights, title and interest of each of said boards in the entire area of said spillway where the property was dedicated for said uses, and

WHEREAS, said former rights of both of said two former levee boards accrued to and became the rights and property of said Orleans Levee Board, save that same were thereafter non-taxable and could not be alienated or sold, as same were intended for and dedicated to the purposes of said spillway and have been so used for the past sixteen years by the Orleans Levee Board, and

WHEREAS, under Act 160 of 1926, the legislature of this state did declare in the preamble of said act, that the Orleans Levee Board did construct said spillway, which has been in existence for 16 years, and

WHEREAS, it being impossible to maintain levees, either front or rear, in a spillway, and in accordance with the fact that with the construction of said spillway both of said former levee boards have been removed and ousted from said spillway, the legislature, by Act 246 of 1928, recreated and reorganized said former Grand Prairie Levee District in the section below said spillway, from Cuselich Canal, above to Cubitt's Gap, 15 miles below its former lower boundary. Therefore

Section 1. Be it enacted by the Legislature of Louisiana, That the right, title, ownership and possession of the Board of Levee Commissioners of the Orleans Levee District to all public lands in the area of the Bohemia Spillway between Bohemia Plantation, above, and Cuselich Canal, below, and from the river to the sea subject to whatever valid leasehold rights as may have been granted by the Grand Prairie Levee District on lands previously granted and conveyed to it, prior to the passage of this Act, be now confirmed, quieted and acknowledged, it being recognized that said rights, ownership and possession came into existence when said Orleans Levee Board located and constructed said Bohemia Spillway in the year 1925.

Section 2. That all laws and parts of laws in conflict with this act be and the same are hereby repealed.

Note—The foregoing Act having been submitted to his Excellency, Honorable Sam H. Jones, Governor of the

State of Louisiana, for his approval or disapproval, and the same not having been acted upon within the time limit prescribed by the Constitution of this State, the same has become a law by limitation.

(Signed) JAS. A GREMILLION,
Secretary of State.

July 15, 1942.

A true copy:
JAS. A. GREMILLION,
Secretary of State.

APPENDIX G.

AN EXTRACT OF THE TRANSCRIPT OF TESTIMONY APPEARING AT PAGE 178 WHICH CONTAINS THE RULING OF THE TRIAL COURT REJECTING THE INTRODUCTION INTO EVIDENCE OF A COPY OF LOUISIANA ACT 311 OF 1942.

THE COURT:

The court reserved its ruling on whether it would allow filing of a certified copy of Act 311 of 1942, and the court has since read these whereases attached to the act and the court is of the opinion there are several statements made in the preamble that have not been borne out by the evidence in the case and therefore the court will sustain the objection to the introduction and will not permit the certified copy of the said act to be filed in this record.

APPENDIX H.

In the Supreme Court of the State of Louisiana

Richardson & Bass, Appellee vs. The Board of Commissioners of the Orleans Levee District (Appellant), et al., (Appellees)	No. 42,057

MOTION TO EXTEND TIME FOR FILING RECORD AND DOCKETING APPEAL.

JOHN E. POTTHARST, SR., intervenor, and appellant herein, shows to the court as follows:

1. Notice of Appeal to the Supreme Court of the United States was filed herein by appellant on the 16th day of May, 1956.

2. The Clerk of Court was unable to complete the preparation of the record on appeal herein within such time as to enable appellant to complete the required jurisdictional statement, and effect the printing thereof by the time prescribed for the docketing of the case in the Supreme Court of the United States.

WHEREFORE, appellant moves the Court for an order extending the time within which the record on appeal may be filed and the appeal docketed in the Supreme Court of the United States to and including the 15th day of October, 1956.

(Signed) WILLIAM M. CAMPBELL, JR.
Attorney for John E. Pottharst, Sr.
1212 Richards Bldg.
New Orleans, La.

ORDER.

IT IS ORDERED that the time within which the record on appeal may be filed and the appeal docketed in the Supreme Court of the United States be and is hereby extended to and including the 15th day of October, 1956.

New Orleans, Louisiana, this 12th day of July, 1956.

(signed) JNO. B. FOURNET,
Chief Justice, Supreme Court
of Louisiana

PROOF OF SERVICE.

I, WILLIAM M. CAMPBELL, JR., Attorney of record for JOHN E. POTTHARST, SR., appellant herein, depose and say that on the 12th day of July, 1956, I served a copy of the foregoing Motion to Extend Time for Filing Record and Docketing Appeal, and the Order of the Court on:

1. Richardson & Bass (La. Acc't.), appellee herein, by mailing to Ledoux R. Provosty, Attorney of Record, at his address 601 Guaranty Bank Bldg., Alexandria, La., and

2. The Police Jury of the Parish of Plaquemines as governing authority of Grand Prairie Levee District, appellee herein, by mailing to Leander H. Perez, District Attorney, 2307 American Bank Bldg., New Orleans, La., and to Charles J. Rivet, Richards Bldg., New Orleans, Attorneys of record, and

3. Board of Levee Commissioners of the Orleans Levee District, appellee herein, by mailing to Kalford K. Miazza, Attorney of record, National Bank of Commerce Bldg., New Orleans, and

4. Delta Development Company, Inc., appellee herein, by mailing to S. W. Plauche, Jr., Attorney of record, Lake Charles, La., all of the above notices deposited in a United States Mail box, with first class postage prepaid, addressed as indicated.

(signed) WILLIAM M. CAMPBELL, JR.

A True Copy

Clerk's Office, New Orleans, July 12th, 1956

V. J. COURVILLE

Clerk Supreme Court of Louisiana

APPENDIX I.

SUPREME COURT OF LOUISIANA

No. 42,057

Richardson & Bass (Louisiana Account)

versus

Board of Levee Commissioners of the Orleans Levee District, et al.

SPECIAL PLEAS OF UNCONSTITUTIONALITY.

To the Honorable the Supreme Court of Louisiana:

JOHN E. POTTHARST, SR., is aggrieved by the process employed in the review of this cause by the Supreme Court of Louisiana as revealed by the opinion of the court rendered herein on June 30, 1955, and accordingly files these special and expressed pleas of unconstitutionality, to-wit:

1.

The majority opinion rendered herein on June 30, 1955, has accepted and adopted as conclusive facts the recitations contained in the preamble to Act 311 of 1942.

2.

The legislative declarations of fact in the preamble of Act 311 of 1942 are contrary to the findings of fact of the trial court, exercising its judicial prerogative.

3.

The Supreme Court of Louisiana, in reviewing this cause and expressing the opinion of June 30, 1955, refused to review the findings of the trial court in the light of the evidence adduced at the trial of this cause and consequently predicated the decision of June 30, 1955, on the legislative declarations contained in the preamble of Act 311 of 1942, in the place and stead of the judicially determined facts. Such judicial process is unconstitutional and contrary to the views expressed in Manly v. Georgia, 279 U. S. 1, 49 S. Ct. 215.

4.

The Supreme Court of Louisiana in reviewing this cause and expressing the opinion of June 30, likewise predicated its opinion upon some supposed facts and declarations of the Legislature contained in the preamble of Act 311 of 1942, which do not exist and never did exist, the circumstances relating to which were not presented to the court on the trial of this cause by any of the parties thereto, because the trial judge ruled that the said alleged facts set out in the preamble to Act 311 of 1942 could not be considered or accepted as facts by the Court and testimony thereto, therefore, was irrelevant. Consequently, by the ruling of the Court, John E. Pottharst, Sr., was afforded no opportunity either to cross-examine any of the witnesses of the Orleans Levee Board, or to offer evidence to refute the alleged facts set up in said preamble, and, therefore, the said John E. Pottharst, Sr., was deprived of due process of law. Such judicial process is unconstitutional and contrary to the views expressed in Saunders v. Shaw, 244 U. S. 317, 37 S. Ct. 638.

5.

The foregoing process of the Supreme Court of Louisiana has effectively deprived John E. Pottharst, Sr., of his property, specifically the real property of the Grand Prairie Levee District mortgaged and pledged as security for the bonds issued under Act 325 of 1938 and held by John E. Pottharst, Sr., all in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 2 of the Constitution of the State of Louisiana.

WHEREFORE, John E. Pottharst, Sr., acting at his earliest opportunity, respectfully submits the foregoing pleas of unconstitutionality which are expressly and specially pleaded, and prays that, after due consideration thereof, the opinion of this Honorable Court rendered herein on June 30, 1955, be recalled and set aside and the judgment of the lower court affirmed.

(S) William M. Campbell, Jr.

William M. Campbell, Jr.
Attorney for John E. Pottharst, Sr.

CERTIFICATE.

I certify that a copy of the foregoing special pleas of unconstitutionality has been mailed to each counsel of record in this cause.

(S) William M. Campbell, Jr.

FILED
NOV 2 1956
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 496

JOHN E. POTTHARST, SR.,

Appellant,

versus

RICHARDSON & BASS (LOUISIANA ACCOUNT), THE BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, PLAQUEMINES PARISH POLICE JURY, AS GOVERNING AUTHORITY OF GRAND PRAIRIE LEVEE DISTRICT, DELTA DEVELOPMENT COMPANY, INC.,

Appellees.

Appeal from the Supreme Court of Louisiana.

MOTION OF ORLEANS LEVEE BOARD, APPELLEE, TO DISMISS THE APPEAL AND BRIEF IN SUPPORT THEREOF.

KALFORD K. MIAZZA,
Special Counsel for Board of Levee Commissioners of the Orleans Levee District,
1806 National Bank of Commerce Building,
New Orleans, Louisiana.

BENTLEY G. BYRNES,
General Counsel for Board of Levee Commissioners of the Orleans Levee District,
315 California Building,
New Orleans, Louisiana.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 496

JOHN E. POTTHARST, SR.,

Appellant,

versus

RICHARDSON & BASS (LOUISIANA ACCOUNT), THE BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, PLAQUEMINES PARISH POLICE JURY, AS GOVERNING AUTHORITY OF GRAND PRAIRIE LEVEE DISTRICT, DELTA DEVELOPMENT COMPANY, INC.,

Appellees.

Appeal from the Supreme Court of Louisiana.

MOTION OF ORLEANS LEVEE BOARD, APPELLEE, TO DISMISS THE APPEAL AND BRIEF IN SUPPORT THEREOF.

May It Please the Court:

Appellee, Board of Levee Commissioners of the Orleans Levee District (hereinafter referred to as Orleans Levee Board) moves the Court to dismiss the appeal taken herein by John E Pottharst, Sr., on the grounds that:

1. The appeal does not present a substantial federal question; and

2. The judgment of the Louisiana Supreme Court rests upon an adequate nonfederal basis.

The appellant-intervenor, John E. Pottharst, Sr., was not an original party to the concursus proceeding which was filed in the 25th Judicial District Court for the Parish of Plaquemines by Richardson & Bass (Louisiana Account). The plaintiff in the concursus proceeding claimed that it was the holder of two mineral leases, one having been granted by the Grand Prairie Levee District, and the other granted by the Orleans Levee Board.

The plaintiff sought leave under Louisiana Revised Statutes, Title 13, Section 4811 (Act 123 of 1922), to deposit in the registry of the court the proceeds from the sale of oil and gas from the wells located on the unit which included in part the South half of Section 18, Township 18 South, Range 16 East.

The initial deposit by the plaintiff in the concursus proceeding at the time the suit was filed on April 21, 1952, was $67,215.32, and under the applicable order of the District Court the monthly runs which accrued each month and attributable to this suit were deposited in the

registry of court so that at the time of the trial of this case there was on deposit an amount in excess of $200,000.00.

The appellant herein filed his petition of intervention on October 28, 1953, wherein he claimed to be the holder of ten $1,000.00 bonds issued by the Grand Prairie Levee District on October 1, 1938, as part of a total authorized issue of $50,000.00. Intervenor claimed in his petition of intervention that if Act 311 of 1942 (Louisiana Legislature) divested the Grand Prairie Levee District of any property that it owned at the time that the bonds were issued, then the Act was unconstitutional and would impair the obligation of his contract in violation of Section 15, Article 4 of the Louisiana Constitution, and of Section 10, Article 1, of the Constitution of the United States. An exception of no right or cause of action and an exception that the petition of intervention sought to raise unauthorized new issues was filed by the Orleans Levee Board but was overruled by the District Court.

CLAIM OF IMPAIRMENT OF CONTRACT.

The only decision of the Louisiana Supreme Court to be considered in the present appeal on the question of impairment of contract is that decision rendered on February 20, 1956, upon rehearing, wherein the Supreme Court had granted to the intervenor a rehearing for the specific purpose of examining the correctness of the ruling in the original opinion. That portion of the opinion is contained on pages 58 and 59 of appellant's brief, and for convenience we quote the following language:

"Being doubtful of the correctness of this ruling, we granted intervenor a rehearing on his argument that he is entitled to have it recognized that his bonds are secured by a mortgage on the land under lease. **However, as will be seen from the statement of intervenor's pleadings, it does not appear that he is seeking the relief demanded in this Court.** He makes no claim therein that his bonds are in default or that his rights as mortgagee of the land might be impaired by the outcome of this litigation or even that the issues in this case necessarily require that a determination be made of whether the transfer of the ownership of the lands in the Bohemia Spillway area from Grand Prairie to Orleans Levee Board by the 1942 Act impaired the security given him by law. **Actually, his only plea is that Grand Prairie is entitled to be recognized as owner of a 1/8th royalty interest in all production from the 1936 mineral lease and that, unless this is adjudged, the security of his bonds will be unconstitutionally diminished because Act 325 of 1938 provides that the bonds issued thereunder shall be secured, among other things, by the revenues and income of all lands owned by Grand Prairie Levee District.**

"Obviously, this provision relative to the bondholders' security in revenues from lands is applicable only to the mortgaged lands while they are owned by the Levee District. Grand Prairie had long since been divested of the land subject to the leases herein when production was obtained by Richardson & Bass and therefore none of the

revenue derived therefrom belongs to Grand Prairie or is subject to the payment of the bonds which are not even alleged to be in default. **Accordingly, as the case merely involves the recognition of ownership of certain oil production, there is no necessity and really no issue for determination respecting the rights of a bondholder of Grand Prairie Levee District to have recognition of his mortgage and any opinion expressed by us in this proceeding would be purely advisory.** Since the intervention could only be considered on the basis that the bondholder had an interest in maintaining Grand Prairie's position, the rejection of that Levee District's claim operates as ground for its dismissal." (Emphasis supplied.)

The rationale of the decision of the Louisiana Supreme Court is based upon adequate and sound legal procedural concepts under Louisiana law. There was no proper issue of impairment of contract or question of constitutional law considered by the Louisiana Supreme Court and there is no substantial federal question involved in this appeal.

The intervenor was not an original party to this suit and could not properly be one. The purpose of a concursus proceeding is to permit an innocent stakeholder to deposit in the registry of court certain funds or monies which may be claimed by two or more persons and to thereby relieve the stakeholder from any personal liability in the premises. See Louisiana Revised Statutes, Title 48, Section 4811 (Act 123 of 1922).

If parties have adverse claims to land, then the courts of the state (and in proper instances the federal courts) are available for them to seek judicial determination of their rights. By instituting such suits, the parties may determine and limit the scope thereof. On the other hand, interpleader is an equitable proceeding designed solely for the protection of an innocent stakeholder, and for this reason the stakeholder has no right or interest to provoke litigation between others further than is absolutely necessary to protect the stakeholder.

In *Standard Oil Company of Louisiana v. Futral*, 204 La. 215, 15 So. (2d) 65 (1943), the Supreme Court of Louisiana pointed out:

> "Since this is a concursus proceeding involving only the rights of claimants to the proceeds of certain oil extracted from the land, and since there was no oil extracted from that portion of the land which Futral alleged was 'segregated and separated' from the main tract by the railway and the highway, the question whether the description in the sale by Futral to his vendees properly included the land so 'segregated' was not an issue involved in the case." (15 So. (2d) 78).

One of the conditions of an interest so as to justify an intervention lies in the right of intervenor to file a separate and independent action. *State Board of Medical Examiners v. McHenry*, 69 So. (2d) 592 (La. App. (2d) Cir. 1953). If instead of filing such separate action, a person chooses to intervene then he cannot raise issues which the parties themselves have not raised, but the

intervenor must take the suit as he finds it, since, if he wants to interject new issues and have new matters adjudicated, he has recourse to a separate suit. *State ex rel. Temple v. Vernon Parish School Board*, 178 So. 176, 178 (La. App. 1st Cir. 1938); *Bonnabel v. Police Jury, Parish of Jefferson*, 216 La. 798, 44 So. (2d) 872 (1950).

In the case under consideration, the intervenor, Pottharst, prayed for leave to intervene to "resist any and all pretentions of the Board of Levee Commissioners of the Orleans Levee District to the ownership of any part of the lands described in plaintiff's petition, or to any income and revenue derived therefrom". The intervenor prayed for citation and **"that Grand Prairie Levee District be recognized as the owner of the lands described in plaintiff's petition, entitled, as such, to all income and revenue accrued and to accrue under the mineral lease described in said petition."** (See prayer of intervenor's petition.)

The opinion on rehearing of the Supreme Court of Louisiana correctly pointed out that the relief sought by intervenor was not to have a recognition that his bonds are secured by a mortgage of the lands under lease. The opinion further pointed out that intervenor made no claim that his bonds are in default or that his rights as mortgagee of the land might be impaired by the outcome of the litigation, or even that the issue in the case required a determination of whether Act 311 of 1942 impaired the security granted to intervenor.

The Supreme Court of Louisiana summarized intervenor's case when it stated that intervenor's only plea was that Grand Prairie Levee District should be recog-

nized as owner of a one-eighth royalty interest, and that unless this were adjudged, the security of his bonds would be unconstitutionally diminished. The Court pointed out that the production which was the subject matter of the concursus proceeding **was from wells drilled long after Grand Prairie Levee District had been divested of this land by Act 311 of 1942.** The Court correctly concluded that none of the revenue derived therefrom belonged to Grand Prairie Levee District, nor was it subject to the payment of the bonds which had not even been alleged to have been in default. Since the intervention could only be considered on the basis that the bondholder had an interest in maintaining Grand Prairie Levee District's position, the rejection of the claim of that Levee District operated as a ground for the dismissal of the petition of intervention.

A correct analysis of the issues involved in the concursus proceeding clearly indicates that there was no question involved as to the rights of any bondholder, and particularly the intervenor-appellant herein. The concursus proceedings only involved the distribution of a proportionate share of monies derived from the sale of oil and gas from a production unit which included a portion of the South half of Section which was claimed both by Grand Prairie Levee District and Orleans Levee Board. The bondholder (appellant-intervenor) admittedly had been receiving interest on the twenty year bonds as such interest became due and the bonds were not in default. The bonds were issued under date of October 1, 1938, and as callable bonds were due on or before October 1, 1958, subject to call ten years after date. Intervenor

was not claiming a lien or privilege on the funds deposited in the concursus proceeding. (Testimony Pottharst p. 85)

Neither was the intervenor claiming that his bonds were unpaid or in default nor that he was entitled to be paid out of any part of the money deposited in the registry of the court. Neither was the intervenor claiming that any part of the monies should be set aside or withheld in the registry of the court until the maturity date of the bonds in 1958.

As a practical matter, as will be borne out by the entire record which was before the Louisiana Supreme Court for consideration, Grand Prairie Levee District had received over $2,214,398.54 for the period from January 10, 1939, through December 23, 1949, from oil and gas royalties on various other lands which it owned and which were in no wise involved in the controversy which was the subject matter of the concursus proceeding. In addition, the record will bear out that the Police Jury of Plaquemines Parish as governing authority of the Grand Prairie Levee District had received over $1,500,000.00 for the account of the Grand Prairie Levee District representing oil royalties on various other lands owned by the Grand Prairie Levee District for the period from January, 1950, to January, 1954.

Furthermore, under Act 47 of the Louisiana Legislature for the year 1948, the Police Jury of Plaquemines Parish was given the right to become the governing authority of the Grand Prairie Levee District, provided it shall assume the bonds of the Grand Prairie Levee Dis-

trict as authorized in said Act, as well as all other indebtedness of said Grand Prairie Levee District as authorized by existing laws. Such assun_ :ion of bonded indebtedness was necessarily made since the Police Jury of Plaquemines Parish appeared in this concursus proceeding as governing authority of the Grand Prairie Levee District.

The $50,000.00 bond issue of which the intervenor held $10,000.00 in bonds was authorized by Act 325 of 1938, a copy of which Act is contained in the appendix to appellant's brief. By reference to the provisions of the Act, it will be seen that the bond issue was secured by **taxation** and by mortgage, sale and revenues of all lands owned by the Grand Prairie Levee District. Act 25 of 1938 merely amended Act 24 of 1898 which created the Grand Prairie Levee District. Section 17 of Act 24 of 1898 provides that if an officer charged with the duty of collecting or disbursing revenues should fail or refuse to perform such duties, then the holder of any bonds may apply for a mandamus to compel such officer to discharge his duties. It is apparent that in the event of a bond default, the appellant has an adequate legal redress to compel the assessment of taxation to pay the bonds.

Since there has not and cannot be any showing by intervenor that the awarding of the funds in the concursus proceedings has impaired the obligation of any bond contract of the intervenor, it necessarily follows that there has not been any substantial federal question raised in these proceedings.

In *Port of Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398 (1886) this Court recognized that no court had there-

tofore held that impairment of obligation resulted from a change in the tax structure **unless the change in fact caused a default in constitutional fulfillment.**

The rule has more recently been stated by this Court in *Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Company, et al.*, 300 U. S. 125, 57 S. Ct. 338 (1937) as follows:

> "The Legislature may modify, limit, or alter the remedy for enforcement of a contract without impairing its obligation, but in so doing, it may not deny all remedy or so circumscribe the existing remedy with conditions and restrictions as seriously to impair the value of the right. The particular remedy existing at the date of the contract may be altogether abrogated if another equally effective for the enforcement of the obligations remains or is substituted for the one taken away. The matter in dispute is whether the questioned enactment falls beyond the boundary of permissible regulation of the remedy for enforcement of the appellant's contract."

This same principle was recognized by the Louisiana Supreme Court in the case of *Board of Commissioners of Atchafalaya Basin Levee District v. C. Lagarde*, 167 La. 612, 120 So. 25 (1928) wherein the court said:

> "But plaintiff urges that the repealing act should not be so interpreted as to violate the obligation of a contract, and points out that the Atchafalaya Basin Levee District has issued bonds, and that the taxes here involved are intended for the

purpose of paying, in part, the bonds issued, and are dedicated to that end. It is a fundamental principle that no law can be passed and permitted to stand that violates the obligation of a contract. However, we are not prepared to hold that the repeal of the laws authorizing the levy and collection of this produce tax will affect the payment, in due course, of the bonds issued. The district has other means provided it and set aside for that purpose. It is fair to presume that the Legislature considered this question before passing the repealing act and found that the laws authorizing the collection of the taxes involved herein could be repealed without detriment to the bonds issued." (120 So. 29)

In *Wells v. Blackman*, 121 La. 394, 46 So. 437 (1908) the Louisiana Supreme Court recognized that a mortgagee should not be permitted to intervene in a suit which did not involve the validity of his mortgage. The Court stated:

"Eugene V. Weems intervenes, alleging that he holds a mortgage for $18,600.00, granted February 9, 1904, by defendant and his major children on the whole of Wellswood Plantation, and, adopting the allegations of the other intervention, he prays that plaintiff's demands be rejected, or that they take the property claimed by them subject to his mortgage. As has been stated, **the validity of the mortgage thus declared on has not been put to issue here, and as the debt to secure which it was granted has not yet matured the intervention has**

nothing to rest on. Moreover, from all appearances, it is amply secured by property which belongs to the mortgagors and is not involved in this controversy." (46 So. 447) (Emphasis supplied)

Act 311 of 1942 has been previously interpreted by the Supreme Court of the State of Louisiana as dedicating the public land in the Bohemia Spillway. *Emery v. Orleans Levee Board*, 207 La. 386, 21 So. (2d) 418 (1945). Subsequent to the rendition of that opinion the petitioners in the *Emery* case applied to this Court for a writ of certiorari on the ground that the act creating the Bohemia Spillway (Act 99 of the Louisiana Legislature for 1924) was in violation of the 5th and 14th Amendments of the Constitution of the United States. The application for such writs was denied. (325 U. S. 879, 65 S. Ct. 1572).

In the present instance the intervenor-appellant is claiming an impairment of the obligation of contract, although no showing has been made that the value of his bond contract has been diminished or that the said bonds are in default or even that there is any likelihood that they may be in default. As a practical matter, no such showing could be made, and the intervenor certainly has access to the courts if and when an occasion should arise which would warrant the institution of such a suit However, to allow the intervenor to come into a concursus proceeding and attempt to raise this constitutional question when the only relief sought by him is the recognition of the claim of Grand Prairie Levee District to the funds deposited in the court is merely to permit the intervenor to raise moot questions beyond the scope of the particular judicial proceedings under review.

Furthermore, Act 311 of 1942 is patently legislation which involves the exercise of the police power of the State of Louisiana in protecting the titles, ownership and possession of lands stated within a spillway or waste weir. Act 99 of 1924 provided for the creation of this spillway, and the Legislature designated the Orleans Levee Board as the state agency to construct and maintain this spillway, which was a safety measure to protect the City of New Orleans from overflow flood waters.

Act 246 of 1928 recreated the Grand Prairie Levee District and located it in an area outside of and below the area of the Grand Prairie Levee District. In 1942 the Legislature passed Act 311 which confirmed and quieted the Orleans Levee Board in the title, ownership, and possession of all public lands in the Bohemia Spillway when it was constructed by said Levee Board in obedience to Act 99 of the Legislature of 1924. (See original opinion of the Louisiana Supreme Court, pages 33, 34, appendix appellant's brief).

Even if it could be established (1) that there had been an unwarranted impairment of the obligation of appellant's bonds, and (2) that such issue was properly presented in a concursus proceeding, **both of which contentions are emphatically denied,** then it does not necessarily follow that there has been an unconstitutional impairment. The State of Louisiana in enacting Act 311 of 1942 was properly exercising its police power so as to assure the continuation and maintenance of a spillway which had been constructed in 1925 by the Orleans Levee Board in order to protect the lives and safety of the people of New Orleans. Under such circumstances prop-

erty rights must give way to the exercise of the police power by the sovereign state in a proper case, since neither the Legislature nor the people can bargain away the public health, the public morals, or the public safety. See *New Orleans Gas Light Company v. Drainage Commission*, 197 U. S. 453, 25 S. Ct. 471 (1905); *Chicago & Alton Ry. Co. v. Tranbarger*, 238 U. S. 67, 35 S. Ct. 678 (1915).

In the *Tranbarger* case, *supra*, this Court in discussing the effect of the contract clause and the due process clause, said:

> "It is established by repeated decisions of this court that neither of these provisions of the Federal Constitution has the effect of overriding the power of the state to establish all regulations reasonably necessary to secure the health, safety, or general welfare of the community, that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise." (35 S. Ct. 682)

It is submitted, however, that it is not necessary to apply this doctrine of inherent police power, since the issue of contract impairment was not and could not be raised properly by intervenor in this concursus proceeding. Neither was such issue passed upon by the Louisiana Supreme Court which pointed out that in view of the limited relief sought by the pleadings of intervenor its opinion in that respect could only be advisory.

This is not a case in which probable jurisdiction should be noted. The decision of the Louisiana Supreme

Court rests upon an adequate non-federal basis and in conformity with the prior jurisprudence of the state court. To require the review on appeal of the alleged contract impairment, not involved in the decree and opinion of the state court, can only cause unwarranted expense and delay to the litigants, particularly where there has been no showing of default in constitutional fulfillment.

QUESTION OF DENIAL OF DUE PROCESS OF LAW.

Intervenor-appellant is claiming belatedly that he has been denied due process of law afforded by the 14th Amendment of the Federal Constitution because the Louisiana Supreme Court "accepted" the legislative declarations contained in the preamble to Act 311 of 1942. The constitutional claims which are now being asserted by intervenor-appellant were raised for the first time by appellant by the filing of a special plea of constitutionality on September 9, 1955, which was two months and nine days after the rendition of the original decree and opinion of the Supreme Court of Louisiana on June 30, 1955.

Appellant's present contentions are necessarily predicated upon the erroneous and unsupported assumptions that (a) the prefatory statements in the preamble of Act 311 constituted the *ratio decidendi* of the case and (b) that the intervenor was prejudiced thereby in presenting his defense in the trial court. An examination of the two opinions of the Supreme Court of Louisiana, as well as a reading of Act 311 of 1942, should readily disclose that appellant's argument at best is an illusory one.

The case of *Manley v. State of Georgia*, 279 U. S. 1, 49 S. Ct. 215 (1929), which is strongly relied upon by appellant, involved a criminal statute of Georgia wherein one of the **enacting** sections stipulated that every insolvency of a bank shall be deemed fraudulent, provided, however, that the defendant in a case arising under that section could repel the presumption of fraud by showing that the affairs of the bank had been fairly and legally administered. It is clear, therefore, that what this Court had under consideration in the *Manley* case **was a legislative presumption created in the enacting body of the legislative act** which raised a presumption of guilt subject to rebuttal under certain circumstances. This Court correctly stated that if the presumption is not unreasonable and is not made conclusive of the rights of the person against whom raised, it does not constitute a denial of due process of law. It was properly held, however, in that case that the presumption of guilt did not rest upon any definite basis, and consequently was unreasonable and arbitrary and in violation of the due process clause.

In the case under consideration it is patent that Act 311 of 1942 does not raise any presumptions. The **preamble** to Act 311 of 1942 is merely a statement of intent and purpose by the Legislature and it has been held in Louisiana that the preamble to an act is merely a prefatory statement which is without force in a legislative sense. In *City of New Orleans v. Administrators of Tulane Educational Fund*, 193 La. 297, 190 So. 560 (1939), the Supreme Court of Louisiana, in discussing this precise point, said:

> "The preamble is without force in a legislative sense, being nothing more than a prefatory

> statement by the legislature of its reason for giving such power to the Board of Administrators. It neither limits nor controls the scope of the application of the enacting clauses of the statute." (190 So. 562) (Emphasis supplied)

The only **controlling** part of Act 311 of 1942 is the **enacting** clause which is contained in Section 1 of the Act and which is set forth on page 68 of appellant's brief. That section unequivocally provides that the right, title, ownership, and possession of the Orleans Levee Board to all public lands in the area of the Bohemia Spillway was confirmed, quieted, and acknowledged. It is clear that Section 1 does not raise presumptions as to title, but to the contrary is an unambiguous legislative enactment transferring a title of public lands within a designated area to a state agency, namely, the Orleans Levee Board.

The original opinion of the Louisiana Supreme Court, which is contained on pages 28 to 44 inclusive of appellant's brief, held that in 1942 the Louisiana Legislature by Act 311 of 1942 granted and confirmed the title of the Orleans Levee Board to all public lands in the spillway area in the Parish of Plaquemines. A reference by the author of the majority opinion to the preamble of the 1942 Act was only *dicta* and no efficacious argument can be made that such *dicta* constituted any part of the rationale of the Court's decision.

Upon rehearing, the majority opinion of the Louisiana Supreme Court reaffirmed that Act 311 of 1942 constituted a legislative grant to the Orleans Levee Board

and invested that Board with legal title without the necessity of formal act of conveyance. A reading of the opinion of the Court on rehearing will readily disclose that its decision is based solely upon the enacting clause of Act 311 of 1942 and not upon any statements contained in the preamble to the Act. In fact, there is no reference to the prefatory statements contained in the preamble to Act 311.

The only purpose of Orleans Levee Board in offering in evidence in the trial of the case a certified copy of Act 311 of 1942 was to avoid any contention that Act 311 was a local or special law and that the Court could not take cognizance of a local law. The trial court sustained the objection to the admissibility of the act itself which was of no moment, however, since the Supreme Court recognized that Act 311 was not a local or special law. (See Court's opinion, page 41, Appellant's Brief). Also see *Knapp, et al., v Jefferson-Plaquemines Drainage District*, 224 La. 105, 68 So. (2d) 774 (1953).

There is clearly no substance in the claim of appellant as to deprivation of due process. Act 311 of 1942 creates no irrebuttable presumptions and the only complaint of appellant is in regard to the prefatory statements contained in the preamble to the Act. Such prefatory statements formed no part of the decree of the Louisiana Supreme Court and a reading of the two decisions of the Supreme Court will clearly bear this out.

It is elementary that jurisdiction cannot be founded upon surmise and that it must appear from the record that not only that a federal question or constitutional right was involved, but that such federal question or

infringement of constitutional right must have a substantial foundation and not depend solely upon unsupported averment. If the rule were otherwise, then a claim of constitutional deprivation could be claimed in almost any case and the jurisdiction of this Court invoked simply for the purpose of delay. *Lynch, et al., State Tax Commissioners of New York v. People of New York, ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16 (1934); *Buck, et al., v. People of State of California*, 343 U. S. 99, 72 S. Ct. 502 (1952); *City of New Orleans, et al., v. New Orleans Water Works Co., et al.*, 142 U. S. 79, 12 S. Ct. 142 (1891).

CONCLUSION.

Wherefore, it is respectfully submitted that this Court is without jurisdiction of this appeal and appellee, Board of Levee Commissioners of the Orleans Levee District, moves the Court to dismiss the appeal herein taken by John E. Pottharst, Sr., for the reasons more fully set forth in this motion of dismissal and without the necessity of further argument.

Respectfully submitted,

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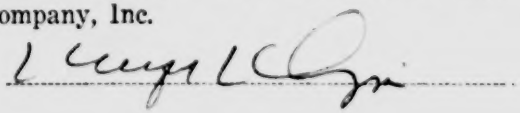
CERTIFICATE OF SERVICE.

I, Kalford K. Miazza, a membe of the Bar of the Supreme Court of the United States and one of the attorneys for the appellee herein, do hereby certify that on the 31st day of October, 1956, a copy of this motion to dismiss the appeal and brief in support thereof was served upon William M. Campbell, Jr., counsel for intervenor-appellant, by delivering a copy to his office, 1212 Richards Building, New Orleans, Louisiana. I also certify that on the same day I have mailed copies to Ledoux Provosty, Jr., counsel for Richardson & Bass (Louisiana Account), 601 Guaranty Bank Building, Alexandria, Louisiana; Leander H. Perez, 2307 American Bank Building, New Orleans, Louisiana, and Charles J. Rivet, Richards Building, New Orleans, Louisiana, counsel for the Police Jury of the Parish of Plaquemines as governing authority of Grand Prairie Levee District; S. W. Plauche, Jr., Pioneer Building, Lake Charles, Louisiana, counsel for Delta Development Company, Inc.



Reported below: 272 Wis. 573, 76 N. W. 2d 541.

No. 496. POTTHARST *v.* RICHARDSON & BASS ET AL. Appeal from the Supreme Court of Louisiana. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *William M. Campbell, Jr.* for appellant. *Kalford K. Miazza* and *Bentley G. Byrnes* for the Orleans Levee Board, appellee. Reported below: 231 La. 299, 91 So. 2d 353.

No. 382 Misc. INVERNY *v.* OREGON. Appeal from the